TRANSCRIPT OF RE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 193.

THE BOARD OF TRUSTEES OF THE NEVILLE [illegible]
TEX., ET AL., FOR THE BENEFIT OF THE [illegible]
[illegible] THEREOF, PLAINTIFF IN ERROR,

vs.

THE BOARD OF TRUSTEES OF THE [illegible]

(24,733)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 129.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, PLAINTIFF IN ERROR,

vs.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW MEXICO.

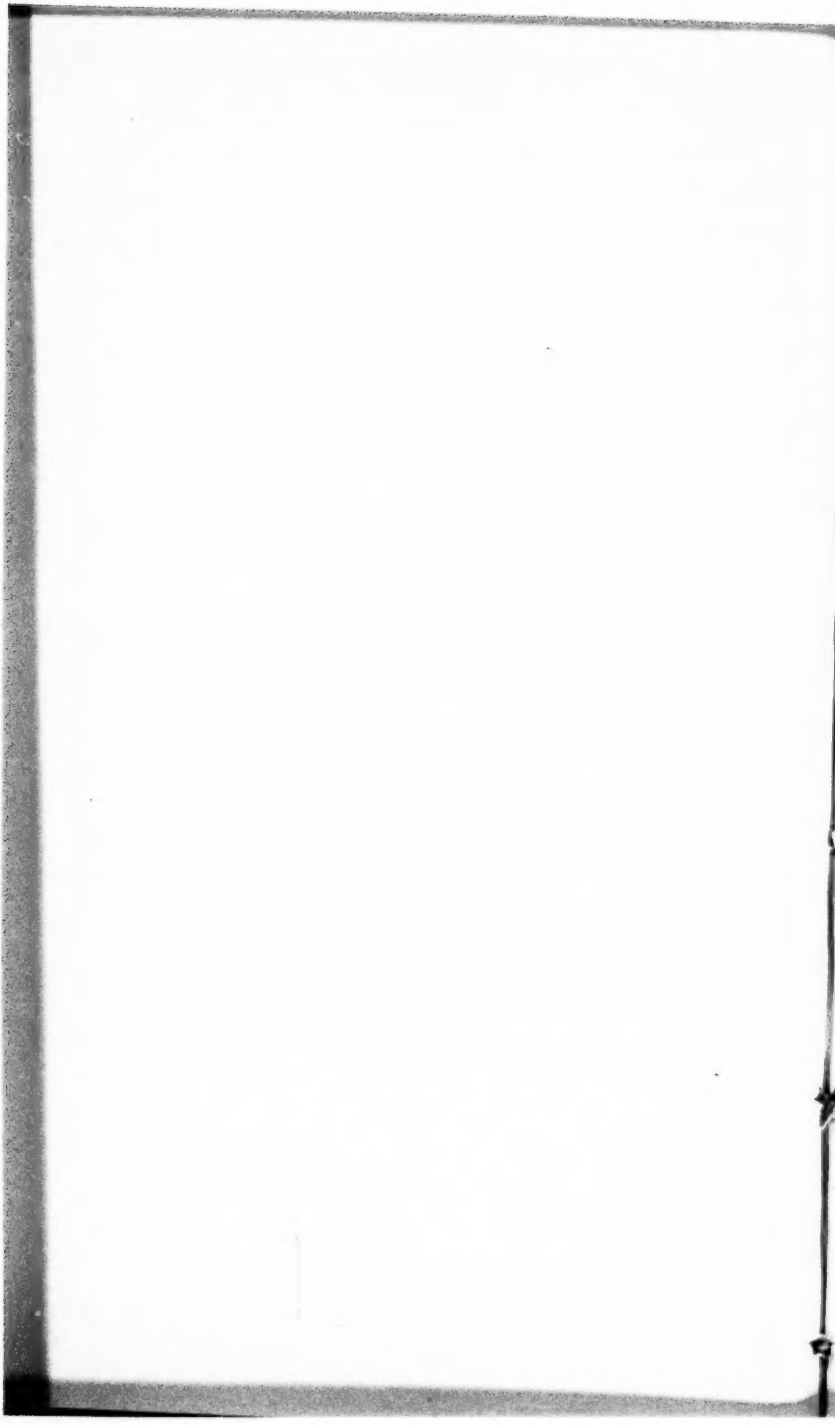
INDEX.

	Original.	Print
Caption.....(omitted in printing)..	1	
Transcript of record from the district court of Socorro.....	2	1
Complaint	2	1
Exhibit A—Patent to Gabaldon (omitted in printing)	4	
Demurrer.....(omitted in printing)..	8	
Answer	9	2
Exhibit A—Letters patent to town of Belden (omitted in printing)	13	
Reply	16	5
Stipulation as to exhibits.....(omitted in printing)..	21	
Exhibit—Proceedings in case of Peralta *et al. vs.* United States, &c.....(omitted in printing)..	22	
Demurrer to reply.....	26	7

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 7, 1916.

	Original.	Print
Order overruling demurrer	29	9
Trial	30	10
Motion to direct verdict and order	32	11
Verdict	32	11
Motion for a new trial.....(omitted in printing)..	33	
Final judgment	35	12
Bill of exceptions	36	12
Defendant's motion to direct verdict (omitted in printing)	36	
Patent of La Joya Grant.....(omitted in printing)..	37	
Testimony of John W. March	41	12
Record of court of private land claims *in re* La Joya Grant	42	13
Petition	42	13
Plat of original (Easley) survey (omitted in printing)	47	
Protest of Belen claimants	48	16
Order for resurvey	56	20
Plat of resurvey.....(omitted in printing)..	58	
Deposition (letter) of W. H. Pope	59	21
Deposition (letter) of T. B. Catron (omitted in printing)	64	
Letter, Commissioner of General Land Office to surveyor general.....(omitted in printing)..	67	
Portion of transcript of evidence in court of private land claims.....(omitted in printing)..	71	
Act of confirmation, Belen Grant (omitted in printing)	71	
Papers transmitted to Congress *in re* Belen Grant (omitted in printing)	73	
Patent of Belen Grant.....(omitted in printing)..	84	
Plat of survey of Belen Grant (" ")..	88	
Original papers of surveyor general's office referred to in petition.....(omitted in printing)..	89	
Letter, Smith to Grow, May 12, 1862 (omitted in printing)	89	
Letter, Edmunds to Smith, May 6, 1862 (omitted in printing)	90	
Exhibit A—Schedule.....(omitted in printing)..	90	
Letter, Clark to Edmunds, November 2, 1861, &c. (omitted in printing)	91	
Grant by Aragon, &c. (omitted in printing)..	92	
Petition of the claimants..(" ")..	98	
Decision of the surveyor general (omitted in printing)	100	
Judgment confirming La Joya Grant	101	23
Testimony of Silvestre Esquibel	108	27
Defendant's motion for verdict	109	27
Verdict	111	28
Motion for new trial	111	28
Judge's certificate to bill of exceptions	113	29

	Original.	Print
Order for appeal.....(omitted in printing)..	114	
Cost bond on appeal.....(" ")..	115	
Clerk's certificate	117	30
Costs .....(omitted in printing)..	119	
Assignment of errors in supreme court of New Mexico.....	120	30
Order submitting cause on argument.....	122	32
Judgment	123	32
Motion for rehearing.....	123	33
Order granting rehearing.....	125	34
Order rearguing and resubmitting cause on rehearing.....	126	35
Order adhering	127	35
Opinion of the court on merits.....	127	36
Opinion of the court on rehearing.....	138	42
Certificate of clerk to transcript.....	139	43
Petition for writ of error and allowance.....	140	43
Bond on writ of error.....	144	45
Writ of error.....	146	47
Certificate of lodgment.....	148	48
Citation and service.....	149	48
Clerk's return to writ of error.....	150	49
Stipulation as to parts of record to be printed.....	151	49



* * * * * * *

1 & 2 Be it remembered, that on the 27th day of May, A. D. 1911, there was filed in the office of the Clerk of the District Court, within and for the County of Socorro, Territory of New Mexico (now State of New Mexico), a Complaint, which is in words and figures as follows, to-wit:

TERRITORY OF NEW MEXICO:

Socorro District Court.

No. 6211.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, for the Benefit of the Owners in Common Thereof, Plaintiff,

vs.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Defendant.

Complaint.

The plaintiff, a corporation created, organized and existing under the laws of the Territory of New Mexico complains of the defendant, a corporation created organized and existing under the provisions of an act entitled "An act relating to community land grants" of the legislative assembly of the Territory of New Mexico approved March 18, 1907, and alleges:

I.

That heretofore to-wit on the 31st day of December, 1910, plaintiff was the owner and entitled to the possession of the following tract of land, situate, lying and being in the County of Socorro and Territory of New York and described as follows, to-wit:

"Private Land Grant known as the Sevilleta Grant situated in townships one and two north of range one and two west, town-
3 ships one and two north of ranges one, two, three and four east, township one south of ranges one and two west and township one south of ranges one, two and three east of New Mexico Meridian in New Mexico, containing two hundred and seventy-two thousand, one hundred and ninety-three acres and eighty-eight hundredths of an acre, according to the plat and survey of said claim approved by the court of private land claims, December 12, 1901. Being more particularly bounded and described as follows, to-wit: On the north the boundary of Sabinal being a portion of the grant to Belen and more particularly designated by the ruins of the house of Felipe Romero and the point of the Sabinal Hill (la punta de la loma del Sabinal) lying due east and west of each other; on the east the Cerro Montoso (wooded hill) meaning thereby the summit of

the Cerro Montoso; on the south the arroyo de Alamillo, on the east side of the Rio Grande del Norte and the Arroyo de San Lorenzo on the west side of the Rio Grande del Norte and on the west, the summit of the Sierra de los Ladrones or Ladron Mountain."

being the same property patented by the United States of America to Carlos Gabaldon and others by patent dated February 8th, 1907, a copy of which said patent is hereto annexed and marked Exhibit "A" and is prayed to be taken and considered as part hereof.

Plaintiff further alleges that on to-wit, the day and year last aforesaid at to-wit the County of Socorro aforesaid, the defendants
4–8 entered into said premises and unlawfully withheld and now withholds the same from plaintiff to its damage in the sum of five thousand dollars.

Wherefore plaintiff brings this suit and prays judgment against the said defendant for the recovery of the possession of the said lands and premises and the said sum of five thousand dollars, its damages together with costs of suit. And plaintiff prays for all other proper relief.

NEILL B. FIELD,
Attorney for Plaintiff.

TERRITORY OF NEW MEXICO,
County of Socorro:

Leopoldo Contreras being first duly sworn on his oath deposes and says he is the secretary of the plaintiff in the foregoing complaint, that he has read the said complaint and knows the contents thereof and the allegations therein contained are true of his own knowledge.

LEOPOLDO CONTRERAS.

Subscribed and sworn to before me this 25th day of May, 1911, by Leopoldo Contreras.

[SEAL.]

F. B. BACA,
Notary Public, Socorro County.

My commission expires Nov. 14th, 1914.

* * * * * * *

9 Be it further remembered, that on the 12th day of July, A. D. 1911, there was filed in the office of the Clerk of the District Court, within and for the County of Socorro, T-rritory of New Mexico (now State of New Mexico) an Answer, which said Answer is in words and figures as follows, to-wit:

In the District Court of Socorro County, Territory of New Mexico.

No. 6211.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, for the Benefit of the Owners in Common Thereof, Plaintiff,
vs.
THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Defendants.

Answer.

Comes now the defendant in the above styled action, by Mann & Venable, its attorneys, and for answer to the complaint says:

I.

That it is not guilty of unlawfully withholding the premises mentioned in the complaint filed herein, or any part thereof, in manner and form as the plaintiff has complained against it; and this the defendant puts itself upon the country.

II.

That it denies that heretofore, to-wit, on the 31st day of December, 1910, plaintiff was the owner, and entitled to the possession of, land described in the complaint filed in this cause situate, lying and being in the County of Socorro, Territory of New Mexico. Defendant further denies that on the 31st day of December, 1910, at the County of Socorro, the defendant entered into said premises described in the complaint filed herein, and unlawfully withheld, and now unlawfully withholds the same, from plaintiff, to its damage in the sum of Five Thousand Dollars ($5,000.00), or in any other sum; but on the contrary alleges that at the time named in the complaint the Town of Belen and defendants, as its successors, for more than ten (10) years prior thereto had been in the actual, quiet, peaceful, notorious and adverse possession of, and claiming and holding adversely to said plaintiff, the following tract of land, situate, lying and being in the Counties of Socorro and Valencia, and Territory of New Mexico, and described as follows: Lot number thirty-eight, in township two north of range one east; lot number thirty-eight, in township two north of range two east; lot number thirty-eight, in township two north
11 of range three east; lot number thirty-eight, in township two north of range four east; lot number thirty-eight, in township three north of range one west; lot number thirty-eight, in township three north of range one east; lot number thirty-eight, in township three north of range two east; lot number thirty-eight, in township three north of range three east; lot number thirty-eight, in township three north of range four east; lot number thirty-eight, in township four north of range one west; lot number thirty-eight, in township four north of range one east; lot number thirty-eight, in township four north of range two east; lot number thirty-eight, in township

four north of range three east; lot number thirty-eight, in township four north of range four east; lot number thirty-eight, in township five north of range one west; lot number thirty-eight, in township five north of range one east; and lot number thirty-eight, in township five north of range two east of the New Mexico Meridian, containing one hundred and ninety-four thousand six hundred and sixty-three acres and seventy-five hundredths of an acre, by a title founded upon a written instrument, to-wit, Letters Patent from the United States of America of the land claim of the Town of Belen, of the Territory of New Mexico, designated as Number Thirteen (13) in the report dated the 30th day of September, 1857, by the United States Surveyor General for said Territory, and confirmed by Act of Congress, approved December 22, 1858, entitled "An Act to Confirm the
12 Land Claims of Certain Pueblos and town in the Territory of New Mexico," to the Town of Belen and to the successors and assigns of said Town forever, said Grant being given under the hand of the President of the United States and the Seal of the General Land Office on the 25th day of April, 1871, a copy of which said Letters Patent is hereto annexed and marked "Exhibit A" and is prayed to be taken and considered as part hereof.

That under the said Letters Patent the defendant entered into exclusive possession of the premises described above, adversely asserting title thereto in good faith, founded upon said Letters Patent and in the full belief that the said Letters Patent conveyed to it a good title, and still continues so to hold and possess said premises, claiming title thereto in good faith under said Letters Patent.

Wherefore, defendant demands judgment that the complaint herein be dismissed with costs against plaintiff.

BOARD OF TRUSTEES OF BELEN LAND GRANT,
By ADOLPH DIDIER, *President.*

TERRITORY OF NEW MEXICO,
Valencia County, ss:

Adolph Didier, being first duly sworn, upon his oath deposes and says: That he is president of the defendant, The Board of Trustees of the Belen Land Grant, in the foregoing action; that he has read the said answer and knows the contents thereof; and that
13 & 14 the allegations therein contained are true of his own knowledge.

ADOLPH DIDIER.

Subscribed and sworn to before me this 8th day of July, 1911.

SATURNINO BACA,
Justice of the Peace.

My commission expires—

* * * * * * *

15 Be It Further Remembered, That on the 29th day of August, A. D. 1911, there was filed in the office of the
16 Clerk of the District Court, within and for the County of Socorro, Territory of New Mexico (now State of New

Mexico), a Reply, which said Reply is in words and figures as follows, to-wit:

TERRITORY OF NEW MEXICO:

Socorro District Court.

No. 6211.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA —, FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, Plaintiff,

vs.

THE BOARD OF TRUSTEES OF THE BELEN GRANT.

Reply.

Comes now the plaintiff, by its attorney, and for reply to the new matter contained in the answer of the defendant, says:

I.

It denies each and every allegation of the said answer not hereinafter specifically admitted.

II.

Plaintiff admits that the defendant is the owner of a tract of land which was confirmed to it by an act of Congress approved December 22, 1858, entitled "An Act to Confirm the land claims of certain Pueblos and owns in the Territory of New Mexico," and which was patented to the said Town of Belen by the government of the United States on the 25th day of April, 1871, but this plaintiff denies that any portion of the lands described in the complaint in this case *are* included in or embraced by the said patent, and this
17 plaintiff alleges that the said patent of the government of the United States issued in pursuance of the said act of Congress, was so issued in confirmation of a grant from the Spanish crown to the Town of Belen, which said grant was bounded on the south "By the foundation of the house of Felipe Romero and the ruins and walls of the house of said Felipe Romero." Plaintiff further alleges that the United States had not at the time of the said act of confirmation, or at the time of the issuance of said patent, nor ever had, title to the land south of the line hereinbefore described, and plaintiff, upon advice of counsel, alleges that if the survey made by the officers of the United States prior to the issuance of said patent to the Town of Belen, embraced any lands south of the boundary hereinbefore alleged, such survey and the patent issued in pursuance thereof, was and is void in law and conveyed no estate to the grantee named therein to any such land.

III.

"Plaintiff further alleges that on the 29th day of May, 1819, there was given and granted by the Governor and Captain-General of

the province of New Mexico, under the authority of the King of Spain, to the predecessors in title of this plaintiff, a certain tract of land bounded and described as follows: On the north the boundary of Sabinal, on the south the Alamillo Arroyo, on the opposite side the Arroyo called the San Lorenzo Creek, on the east the mountain in front of said town, and on the west the
18 Ladrone Mountain, which said tract of land plaintiff alleges is the same tract of land described in the complaint in this case. Plaintiff further alleges that thereafter and on the — day of —— 189–, the predecessors in title of this plaintiff submitted its claim to the said grant and tract of land to the Court of Private Land Claims, a court of the United States created, organized and existing under and by virtue of an act entitled "An Act to establish a Court of Private Land Claims and to provide for a settlement of private land claims in certain states and territories approved March 3, 1901," and prayed the said court to confirm and approve the said land claim to the said predecessors in title to this plaintiff, and plaintiff further alleges that such proceedings were had in the said court, that the said land claim was approved and confirmed by the said court and a survey thereof was ordered in pursuance of and by the authority of the said court, which said survey fixed and established the northern boundary of the said private land claim at a point far to the north of the northern boundary of the tract of land as described in the complaint in this case, and thereupon the defendant and its predecessors in title appeared in the said Court of Private Land Claims, by its attorney and legal representatives, and made objection to the survey of the said private land claim of this plaintiff which had been so made by direction of the said Court of Private Land Claims as hereinbefore alleged, and thereupon, on the application of the said defendant and its
19 predecessors in title, a hearing was had in the said Court of Private Land Claims upon the said objections so made by the said defendant and its predecessors in title, and evidence was taken and the location of the northern boundary of the said tract of land was by the consideration and judgment of the said Court of Private Land Claims changed and a re-survey of the said private land claim was, upon the objection of the said defendant and its predecessors in title and in pursuance of the said hearing and adjudication, had and the said northern boundary of the said private land claim of the plaintiff was adjudged to be identical with the southern boundary of the private land claim of the defendant and to be in accordance with the description thereof as set forth in the complaint in this case, and plaintiff alleges that the said judgment of the said Court of Private Land Claims fixing and establishing the said boundary line remains in full force and effect, un-reversed and not appealed from, and therefore the plaintiff says that the location of the said boundary is res judicata and is not subject to re-examination or inquiry in this or any other court, and plaintiff files herewith and makes part hereof a copy of the orders for the re-survey of the said land claim and of the plat made in pursuance thereof, duly approved and confirmed by the said Court of Private

Land Claims, and prays that the same may be taken and considered as part of this reply.

IV.

20 By way of further reply to the answer of defendant, herein, the plaintiff alleges that the plaintiff and the defendant are respectively owners of tracts of land having a common boundary, the northern boundary of the tract *to* the plaintiff being coincident to and identical with the southern boundary of the tract of the defendant, and plaintiff further alleges that long prior to the institution of this suit the common boundary line between said tracts of land had been by the predecessors in title to the plaintiff and the defendant practically located upon the ground and such practical location of such boundary line had been acquiesced in by the predecessors in title of the plaintiff and of the defendant for a long space of time anterior to the institution of this suit, and plaintiff alleges, on the advice of counsel, that the defendant is estopped to question the said practical location of the said boundary line or to assert that it is located at any other or different place from that fixed by the agreement of the predecessors in title of the plaintiff and the defendant as herein alleged.

Plaintiff prays as in its original complaint.

NEILL B. FIELD,
Attorney for Plaintiff.

TERRITORY OF NEW MEXICO,
County of Socorro, ss:

Leopoldo Contreras, being first duly sworn, on his oath deposes and says that he is the secretary of the plaintiff in this cause, that he has read the foregoing reply and knows the contents
21–25 thereof, and the allegations therein contained are true of his own knowledge, except as to so much and to such parts thereof as are made on information and belief, and as to those parts he believes the same to be true.

LEOPOLDO CONTRERAS.

Subscribed and sworn to before me by Leopoldo Contreras this 24th day of August, 1911.

[SEAL.] BERNARDO P. CORDOVA,
Notary Public, Socorro County, N. Mex.

* * * * * * *

26 Be it Further Remembered, That on the 17th day of February, A. D. 1912, there was filed in the office of the Clerk of the District Court, within and for the County of Socorro, State of New Mexico, a Demurrer, which said Demurrer is in words and figures as follows, to wit:

In the District Court of Socorro County, New Mexico.

No. 6211.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA LAND GRANT, for the benefit of the Owners in Common Thereof, Plaintiff,

vs.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Defendant.

27 *Demurrer.*

Comes now the defendant, the Board of Trustees of the Belen Land Grant and demurs to the third and fourth paragraphs of the reply filed herein, for the following reasons, to wit:

I.

That the said paragraph three (3) of said reply does not state facts sufficient to constitute a defense to the answer heretofore filed by the defendant herein, as appears upon the face of said paragraph three (3) of said reply, in this:

(*a*) That said paragraph three (3) of said reply together with the exhibits filed in support thereof show upon their face that the action alleged to have been taken by the Court of Private Land Claims was not an action in a court of competent jurisdiction between the parties to this suit, but was in fact an action between one Felipe Peralta and one Tomas Cordoba vs. the United States.

(*b*) That it affirmatively appears from said paragraph three (3) of said reply and the exhibits thereto attached, that this defendant was not made a party to and never appeared and took any action in the said cause pending in the Court of Private Land Claims, nor are they privies to said parties or any parties to that suit.

(*c*) That it appears from the said paragraph three (3) and the exhibits attached thereto and made a part thereof, that the alleged Decree of Confirmation by the Court of Private Land Claims of the Cebilleta Grant was nothing more than a mere quit-claim from the government of the United States to the plaintiff in that case,
28 and does not and cannot effect rights of third parties.

(*d*) That there is no identity of parties to this suit and the said suit and proceeding set up in paragraph three (3) of said reply and the exhibits attached thereto.

(*e*) That there is no identity of issues in the proceedings set up in said paragraph three (3) of said reply and the issues involved in this case.

(*f*) That the Court of Private Land Claims had no jurisdiction to adjudicate the rights of the defendants in this case, as under the Act of Congress of March 3, 1891, creating said Court, it was expressly provided that "No confirmation of claims or titles in this section mentioned, shall have any effect other or further than as a

release of all claim of title by the United States; and no private right of any person as between himself and other claimants or person succeeding to in such land, shall be in any manner affected thereby."

II.

That paragraph four (4) of said reply does not state facts sufficient to constitute a defense to the answer filed by defendant herein as appears upon the face of said paragraph four (4), in this:

(*a*) That said paragraph four (4) does not state that either the parties to this suit or their predecessors in title ever agreed upon any location of boundary line between the tracts of land described as the Cebilleta de La Joya Land Grant and the Belen Land
29 Grant.

(*b*) That it does not appear from said paragraph four (4) of said reply that the predecessors in title to the plaintiff and defendant ever had any knowledge of the exact location of the boundary line between said grants, or ever agreed upon such location.

(*c*) That it does not appear from said paragraph four (4) that the boundary line between said grant is any different from that contended for by defendant in this action.

MANN & VENABLE,
Albuquerque, New Mexico,
Attorneys for Defendant.

Be It Further Remembered, That on the 4th day of March, A. D., 1912, there was filed in the office of the Clerk of the District Court, within and for the County of Socorro, State of New Mexico, an Order Overruling Demurrer, which said Order is in words and figures as follows, to wit:

In the District Court of the Seventh Judicial District of the State of New Mexico, within and for the County of Socorro.

No. 6211.

BOARD OF TRUSTEES OF THE LA JOYA GRANT
vs.
BOARD OF TRUSTEES OF THE BELEN GRANT.

Order.

This cause came on to be heard upon the demurrer of defendant and after hearing argument of counsel and being fully advised in the premises.

30 The court finds that said demurrer ought to be overruled.

Whereupon it is considered ordered and adjudged that said demurrer be and the same is hereby overruled, to which action of the court the defendant then and there duly excepted.

MERRITT C. MECHEM, *Judge, etc.*

Dated March 4th, 1912.

Be It Further Remembered, That at a regular term of the District Court of the Seventh Judicial District of the State of New Mexico, within and for the County of Socorro, begun and held at the court house in the City of Socorro, County of Socorro, on the third Monday of March, A D. 1913, the same being the seventeenth day of March, A. D. 1913, and on the sixth day of said term, the same being Monday, March 24th, A. D. 1913, the following among other proceedings were had and entered of record, to wit:

No. 6211.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, Plaintiff,

vs.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Defendant.

Comes the plaintiff by Neill B. Field, Esq., its attorney, and comes the defendant by Mann & Venable, Esquires, its attorneys, and all parties announcing themselves ready for trial, issue being
31 joined, the empaneling of a jury for the trial of this cause is entered into; and it now appearing to the court that the regular panel of the petit jury is exhausted, thereupon;

It is agreed by counsel that the nine jurors in the jury box, to-wit: Vicente Jaramillo, Eliseo Chaves, Jose Pino, Espiridion Armijo, Manuel Alderete, David Montoya, Jose Estrada, Joseph J. Epperle, Herminio Gallegos, be accepted as a jury, whose verdict, by consent, is to be received as of a jury of twelve persons; nine good and lawful men taken from the body of the County of Socorro, in the State of New Mexico, duly selected, drawn, accepted, empaneled and sworn to well and truly try the isues joined in this cause pending, wherein the Board of Trustees of the Cebilleta de La Joya is plaintiff and the Board of Trustees of the Belen Land Grant is defendant, and true deliverance make between the plaintiff and the defendant, and a true verdict render according to the law and evidence submitted.

The jury now having heard only a portion of the evidence, and the trial of this cause not being concluded, and the hour of adjournment having arrived, the jury is allowed to separate, and retire until the incoming of court tomorrow morning.

Be it further remembered, that afterwards, to-wit, on the seventh day of said term, the same being Tuesday, March 25th,
32 A. D. 1913, the following among other proceedings were had and entered of record, to-wit:

No. 6211.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, Plaintiff,
vs.
THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Defendant.

Comes the plaintiff by Neill B. Field, Esq., its attorney, and comes the defendant by Mann & Venable, Esquires, its attorneys, and comes the jury heretofore empaneled, and the trial of this cause proceeds; and the court and jury now having heard all of the evidence of plaintiff, and having heard the arguments of counsel; the defendant, by its attorneys, moves the court to instruct the jury to find for the defendant; and the court being well and fully advised in the premises, doth sustain said motion, whereupon;

It is ordered and adjudged by the court, that the defendant's motion be, and the same hereby is sustained, to which ruling of the court, the plaintiff, by its attorney, duly excepts.

The jury thereupon returns the following verdict:

"In the District Court of Socorro County New Mexico.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, Plaintiff,
vs.
THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Defendant.

33 *Verdict.*

We, the jury, under the instructions of the court find the issues for the defendant.

ESPIRIDION ARMIJO, *Foreman.*"

which said verdict is ordered filed in open court, and the jury is by the court discharged from the further consideration of this cause; and now the plaintiff, by its attorney, gives notice of filing a motion for a new trial herein.

* * * * * * *

34 Be it further remembered, that afterwards, to-wit, on the eleventh day of the March A. D. 1913 term, the same being Saturday, March 29th, A. D. 1913, the following among
35 other proceedings were had and entered of record, to-wit:

No. 6211.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, Plaintiff,

vs.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Defendant.

Final Judgment.

And now, on this twenty-ninth day of March, 1913, this cause comes on to be heard upon plaintiff's motion for a new trial herein, heretofore filed in this cause, plaintiff appearing by Neill B. Field, Esq., its attorney, and the defendant appearing by Mann & Vehable, its attorneys, and now the court being fully advised in the premises doth overrule said motion for a new trial, to which said ruling of the court the plaintiff by its counsel then and there duly excepted.

Whereupon counsel for the defendant moves the court for a judgment on the verdict heretofore rendered in this cause, and the court being duly advised in the premises:

It is ordered, adjudged and decreed by the court that this cause be dismissed at plaintiff's costs and that the defendant go hence without day and do have and recover of the plaintiff its costs in this behalf expended to be taxed, and that execution may issue therefor; to which said judgment the plaintiff by its counsel then and there duly excepted.

COLIN NEBLETT, *Judge.*

36–40 Be it further remembered, that on the 2nd day of September, A. D. 1913, there was filed in the office of the Clerk of the District Court, within and for the County of Socorro, State of New Mexico, a Bill of Exceptions, which said Bill of Exceptions is in words and figures as follows, to-wit:

In the District Court of the County of Socorro, State of New Mexico.

No. 6211.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LE JOYA GRANT, FOR THE BENEFIT OF THE OWNERS THEREOF, Plaintiff,

vs.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Defendant.

Bill of Exceptions.

Be it remembered that on the trial of this cause the following proceedings were had:

* * * * * * *

41 JOHN W. MARCH, a witness on behalf of the plaintiff, being first duly sworn, testified in substance that he was

Surveyor General of New Mexico and had in his possession the records of the office of the Surveyor General of New Mexico relating to the Cevilleta de la Joya Grant, that he was custodian of such records by virtue of his office as Surveyor General, and that the same were the original records of the Court of Private Claims in so far as they relate to the case of Tomas Peralta et al. vs. The United States, No. 55 on the docket of that court.

Thereupon plaintiff offered in evidence the said record; to which offer the defendant objected for the following reasons: That the same are incompetent, irrelevant and immaterial in this:

First. That the records of this case purport to be the records of a case tried in the Court of Private Land Claims which was a court of limited and special jurisdiction, vested only with power to litigate the rights of claimants against the United States and the United States itself and having no jurisdiction to litigate as to the rights claimed by individuals or corporations.

Second. For the reason that this purports to be the record of litigation between one Peralta, representing the Cevilleta da la Joya Grant, and the United States Government, to which said case the Belen Grant was not a party and could not be a party.

42 Third. Because the records of that court and of that proceeding are not binding upon the defendant in this case, the Board of Trustees of the Belen Land Grant, and can have no force or effect whatsoever as against them bearing upon the issue in this case.

Fourth. Because the Court of Private Land Claims had no jurisdiction to determine any question as to boundaries between the Belen Grant and the Cevilleta de la Joya Grant.

The said record showed that on the — day of —— 189-, Felipe Peralta and Tomas Cordova filed in the Court of Private Land Claims a petition in words and figures as follows, to-wit:

"THE UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Sitting in the City of Santa Fe, New Mexico, within and for the Santa Fe District.

FELIPE PERALTA AND TOMAS CORDOVA, Plaintiffs,
vs.
THE UNITED STATES OF AMERICA, Defendants.

To the Hon. Joseph R. Reed, Chief Justice, and to the Associate Justices of said Court:

Felipe Peralta and Tomas Cordoba, both residents of the County of Socorro, in the Territory of New Mexico, plaintiffs, bring this their petition against the United States of America, defendants, and thereupon represent and show to this Honorable Court as follows:

43 1st. On the 29th day of May, A. D. 1819, the then governor of the Province of New Mexico, at that time belonging to the Kingdom of Spain, acting under authority of the King of Spain, made

a grant of land to the residents and inhabitants of the place of Nuestra Senora de los Dolores de Cevilleta, at that time sixty-seven in number. On the 4th day of June, A. D. 1819, Miguel Aragon, local alcalde of Belen, placed the said grantees in full, lawful, and juridical possession of said land, acting under the direction of said Governor and Captain General of the Province of New Mexico.

2nd. The original grant papers relating to these lands and to the said grant of this land are now filed in the office of the Surveyor General of the Territory of New Mexico, known in that office as reported No. 95, and are not in the control of the plaintiffs so that they can file them herewith. A copy of the original documents making the grant of land aforesaid, is filed herewith, marked Exhibit "A," and a copy of the official translation of said documents now on file with the original documents is filed herewith marked Exhibit "B."

3rd. The amount of land claimed in said Cevilleta Grant, according to the official survey of the same made by authority of the United States of America, is 224,770.13 acres, and said grant is situated in the County of Socorro, in the Territory of New Mexico. A certified copy of the official plat of said grant of land now on file in the office of the Surveyor General of the Territory of New
44 Mexico, at Santa Fe, New Mexico, showing the quantity, location and boundaries of the same, is filed herewith marked Exhibit "C." The lands claimed are non-mineral, and are bounded on the north by the boundary of Sabinal; on the south the Alamillo Arroyo; on the opposite side the arroyo called San Lorenzo Creek; on the east the mountain in front of said town of Sevilleta, as it existed at the time of the making of said grant, and on the west the Ladrones Mountain.

4th. The said Sevilleta land grant, or grant of land to the Town of Sevilleta, has been considered and acted upon by the Surveyor General of the Territory of New Mexico, and recommended by him for confirmation by the Congress of the United States, on the 14th day of November, A. D. 1874, and his opinion and the proper papers as required by law and the regulations of the General Land Office were transmitted on the 26th day of December, A. D. 1874, through the proper channels, for the action of the Congress of the United States. A duly authorized and official survey of the said grant of land was made in March and April, A. D. 1878, and said survey was approved by the Surveyor General of New Mexico on the 7th day of August, A. D. 1878. The report of the Surveyor General of New Mexico on the said grant was transmitted by the Secretary of the Interior on January 8th, 1875, to the Congress of the United States, and on the same day referred by the House of Representatives to the Committee on Private Land Claims, and
45 ordered to be printed and will be found printed in "Executive Documents, No. 62, of the House of Representatives, 43rd Congress, second session."

No further action in regard to said land grant has been taken by the Congress of the United States or any other authority con-

stituted by law for the adjustment of land titles in the Territory of New Mexico.

5th. The plaintiffs and their co-owners are the legal representatives of the original grantees of said land and claim a perfect title to the same. This claim was complete and perfect at the date when the United States acquired sovereignty over said Territory of New Mexico, and the land has been in peaceable and undisputed possession of the original grantees, their heirs, assigns and legal representatives from the date of the making of the grant to the present time.

6th. There are no known adverse claimants to the said tract of land nor any conflict to the title of plaintiffs and their co-owners to said lands, and plaintiffs pray that if any adverse claimant be discovered hereafter that the name of the same be inserted and made parties hereto. There are several large, permanent settlements on the land claimed and a large number of residents and inhabitants upon said land, all of which residents and inhabitants hold possession of their respective portions of said land with the knowledge and consent of the heirs, assigns, and legal representatives of the original grantees.

Plaintiffs, therefore, pray that this their petition be considered by this Honorable Court and that the validity of said grant
46 of land so made as aforesaid be inquired into and decided and that said tract with the boundaries hereinbefore set forth be confirmed unto the plaintiffs, their co-owners and co-possessors, the heirs and assigns and legal representatives of the original grantees forever, and for such other and general relief as to this Honorable Court may seem meet and proper, and plaintiffs will ever pray.

(Signed) CATRON & COONS,
Attorneys for Plaintiffs.

That the said Court of Private Land Claims took jurisdiction of said petition and the United States appeared in the said cause by their duly constituted attorneys, and such proceedings were had therein that on the 4th day of December, 1893, the said private land claim was by the judgment and decree of said court approved and confirmed, and a survey of the said private land claim was ordered by the said court, in accordance with the practice and procedure in such cases; and that thereafter, in pursuance of the said order a survey of the said private land claim was made by one Easley, a United States Deputy Mineral Surveyor, and the plat and field notes of such survey were duly filed in the office of the Surveyor General of the then Territory of New Mexico, and a certified copy of said plat is as follows:

(Here follows map marked p. 47.)

* * * * * * *

48 That a notice in accordance with the requirement of law was duly published that the said plat and the field notes thereof had been filed in the office of the Surveyor General of the then Territory of New Mexico and that the said Court of Private Land Claims would proceed to approve and confirm the said survey so made unless cause was shown to the contrary by some person interested, prior to the time fixed in said notice; and that thereafter on the 25th day of July, 1896, there was filed in the office of the Suveyor General of the then Territory of New Mexico, a protest, in words and figures as follows, to-wit:

"Before the Surveyor General of the United States for the Territory of New Mexico.

In the Matter *by* the Protest and Objections by the confirmees, claimants, owners and possessors of the 'Belen Claim' and Land Grant No. 13, confirmed by Act of Congress December 22, 1858, against the survey and plat of the Sevilleta Land Grant, the same being numbered 55 on the docket of the United States Court of Private Land Claims and confirmed by decree December the 4th, 1893.

And now comes Jacinto Sanches and Alcairo Sais, citizens of the United States and of the Territory of New Mexico, in their own behalf and on behalf of the other confirmees, claimants, owners and possessors of the 'Belen Claim' and Land Grant, number 13, situate within the said Territory, and respectfully protest on their
49 behalf and object to the survey and plat of the Sevilleta Land Grant No. 55, as now filed in the office of the Surveyor General of the Territory of New Mexico, in so far as the same effect and concerns the north boundary of the said Sevilleta Land Grant.

And for a good and sufficient reason of the said protest and objection they state and represent, that the north boundary and north line of the said Sevilleta Grant, as surveyed and platted, according to the field notes and plats in the case, and now on file in the said Surveyor General's office, overruns and projects within the boundary and boundary lines on the south of the said 'Belen' claim, No. 13, to the amount of a strip, tract and parcel of land, about twenty miles from the east to the west and about two miles from the south to the north.

And the said protestants and objectors further represent and respectfully show, that the said Belen claim No. 13 was made by the crown of Spain on the 9th day of December, A. D. 1740, was reported favorably by the U. S. Surveyor General of New Mexico for confirmation on the 30th day of September, A. D. 1857, and confirmed by act of Congress on the 22nd day of December, A. D. 1858, and surveyed by the United States for 194,663 acres, and patented for such amount of land on the 25th of April, A. D. 1871, many

years prior and anterior to the approval of and confirmation of the said Sevilleta Land claim, No. 55, and has since the said year A. D. 1740, been in full, undisputed and legal possession of the
50 grantees, their heirs and assigns from that date to the present time, and is in such legal and just possession at this date, including the said strip of land described above and alluded to above and in said controversy herein and as having been taken in and made part of the tract contained in the survey of the said Sevilleta Land Grant, No. 55, as shown by the field notes, survey and plat thereof, and as shown by the plat, field notes and plat of the said Belen Land Claim, No. 13, both and all of which are now on file in the office of the said Surveyor General.

And these protestants further show and represent, that according to the survey and plat and original grant papers and the patent of the Belen Claim No. 13, and the Acts of Congress in the matter, the southern boundary line of the said Belen Claim, No. 13, is a line drawn due east and west from the ruins of the house of Felipe Romero and over the Cerro Turutu, a well known and well established land mark, as shown by the patent, plat and official survey of the said Belen Claim No. 13, and that the said south boundary line of the said Belen Claim has been so known, so recognized and so established from and since the year A. D. 1740, and as such is well known by the confirmees and claimants of the said Sevilleta Land Grant, No. 55, and has been so known to all concerned and as a matter of notorious and common public knowledge from the year 1740 to the present time.

And these protestants and objectors further represent and show that they represent the legal owners, possessors and claimants
51 to the said parcel and strip of land alluded to above and more particularly shown and contained within the boundaries of lots No. 38 in T., 2 N. of R. 4 E., 2 N. of R. 3 E., 2 N. of R. 2 E., and in 2 N. of R. 1 E., and north of the line drawn east and west from the said Cerro Turutu and that the claimants, confirmees, heirs and assigns of the said Sevilleta Land Grant, No. 55, have no legal, just or equitable right or title or interest in the said parcel of land just described, as against the owners, claimants, possessors and confirmees of the said Belen Claim, No. 13.

And your protestants and objectors further represent and show, that the survey, field notes and plat of the Sevilleta land claim No. 55, as made and returned to your office, so far as the same effects and concerns the northern boundary of the said claim, is unjust improper and illegal, and that the United States Deputy Surveyor, who made the survey failed and neglected to obtain and secure the necessary evidence and information with regard to where the true and just northern boundary line of the said Sevilleta Grant, No. 55, was and is located, which he ought to have done, and if allowed to stand such survey will seriously and injuriously affect the just interests and well established rights of the confirmees, owners, claimants and possessors of the Belen Claim, No. 13, to their great detriment and disadvantage and will put them to much inconvenience,

trouble and expense to have this error and improper and unjust survey rectified, remedied and corrected.

52 Therefore your protestants and objectors, for themselves and the other owners, confirmees, possessors and claimants of the said lands to the amount as shown by the patent and survey in the case of the said Belen Claim, No. 13, and in view of the facts herein set forth and shown by the records in the Surveyor General's office and of the Court of Private Land Claims, in the cases at issue, pray, that the Surveyor General may order a new survey of the said tract and grant, described as the Sevilleta Land Grant No. 55, with instructions to take testimony of witnesses as to the true and correct and legal boundary line on the north of the said Sevilleta Land Grant, No. 55, for the reason that the present survey and plat are incorrect and unjust, that under the new survey there be incorporated and given to the said claimants, confirmees, owners, etc., of the said Sevilleta grant, No. 55, none of the lands contained within the boundary lines of the Belen Claim, No. 13, as shown on the plats and survey and patents thereof, and the said claimants and confirmees of the said Sevilleta land claim, No. 55, be only given and awarded the lands they are justly entitled to under and by virtue of the decree of the Court of Private Land Claims in the case and under the law establishing the Court of Private Land Claims and none of the lands within the boundaries of the Belen Claim, No. 13, as shown by the plat, survey and patent thereof, as on file in the office of the Surveyor General and in possession of the said confirmees, claimants, owners and possessors of the said Belen

53 Claim, No. 13.

(Signed) JACINTO SANCHES.
ARCADIO SAIS.

TERRITORY OF NEW MEXICO,
County of Santa Fe, ss:

Jacinto Sanches and Alcario Sais, being duly sworn, deposes and says, that they are the protestants and objectors named in the above entitled matter of the Belen Claim, No. 13, that they have read and fully understand the contents thereof and that the statements contained therein are true.

(Signed) JACINTO SANCHES.
ARCADIO SAIS.

Sworn to and subscribed before me this 24th day of July, A. D. 1896.

(Signed) EDWARD L. BARTLETT,
[SEAL.] *Notary Public, Santa Fe County, New Mexico.*"

Endorsements: "Before the U. S. Surveyor General for New Mexico. Cevilleta Land Grant No. 55. Protest against approval of Survey and Plat. Belen Claim No. 13, Protestants. Filed in Sur. Gen'l office July 25, 1896. Max Frost, Att'y for Protestants."

In addition to the objections heretofore set out, counsel for defendant further objected to this protest that it is not shown nor at-

tempted to be shown that the paper was made or signed by any person having power to represent the Belen Land Grant, which was a community grant, and it does not show that these protestants were officers of that grant, or had any power or authority to act
54 for the grant as a community, and that their action, as shown by the paper, was an individual action of the parties making the protest, and not of the Belen Grant; to which counsel for plaintiff replied that plaintiff would show such a state of facts as binds the owners of the Belen Grant by this action.

The defendant thereupon moved to strike out the protest for all of the reasons given *to* its introduction and for the further reason that the Court of Private Land Claims, not having jurisdiction of the subject matter of the dispute between these two grants as to its boundaries, the same could not be conferred upon it even by consent of parties. Second: That the paper cannot be taken as against the defendant for the reason that it has not been shown that the parties making it had authority to do so for any persons otherwise than themselves, and that the defendants and their predecessors in title cannot be bound by mere recitals in a paper of this kind.

The said records of the Court of Private Land Claims further showed that objections were also filed by the attorneys for the United States to the north and east boundary and a portion of the south boundary of the said private land claim, as located by the said survey, and that thereafter and during the May term, 1897, of the said Court of Private Land Claims, a hearing was had before the said court, at which Thomas B. Catron appeared as attorney for the petitioners or claimants and W. H. Pope, assistant attorney for
55 the United States Court of Private Land Claims, appeared on behalf of the United States, and Max Frost, Esquire, an attorney of said court, appeared on behalf of the owners of the Belen Land Grant, and the testimony of divers witnesses was taken as to the true location of the southern boundary of the Belen Land Grant and of the northern boundary of the Cevilleta de la Joya Land Grant and particularly as to the location of the ruins of the house of Felipe Romero and the point of the Sabinal hill, and that the witnesses so examined were Sylvester Esquibel, Felipe Peralta y Sisneros, Julio Sisneros, Jesus Baca y Garcia, Jacinto Sanches, Domingo Baca, Timoteo Ortiz, Luciano Chaves, Sherrard Coleman, William White, Tomas Cordova, Gabriel Pino, Nicolas Mascarenas, Matias Contreras and Albert M. Easley.

The witness March further testified that the said protest was, in pursuance of the usual course of business in the office of the Surveyor General of New Mexico, forwarded to the General Land Office of the United States, and was by the Commissioner of the General Land Office, in pursuance of law, referred to the Court of Private Land Claims, and the record of the Court of Private Land Claims showed that the cause thus came before that court upon the objections of the Belen Grant transmitted through the Surveyor General, and the objections of the United States filed direct with the clerk of the court: that the hearings upon these objections occurred in May, 1897, and that the following orders were entered by the Court of Private Land Claims therein:

56 "15th Day May Term, May 20th, A. D. 1897.

FELIPE PERALTA AND TOMAS CORDOBA
vs.
UNITED STATES.

Cevilleto Grant.

The above entitled cause now coming on to be heard on the objections to the survey heretofore filed by the owners of the Belen Grant and by the United States, there appeared Max Frost, Esq., for and on behalf of the owners of the Belen Grant, William H. Pope, Esq., appeared for the United States, and T. B. Catron, Esq., appeared for the petitioners herein, oral testimony was introduced and the same not being completed the court adjourned until tomorrow at 10 o'clock A. M.

Read and signed in open court.

(Signed) JOSEPH R. REED,
Chief Justice.

13th Day September Term, September 28th, A. D. 1897.

FELIPE PERALTA et al.
vs.
UNITED STATES.

This cause coming on to be heard on the objections heretofore filed by the United States and the owners of the grant of Belen to the north, south and east boundaries of the survey heretofore to-wit on Feb. 9 to 26, 1896, executed by Albert F. Easly, United States deputy surveyor and the court being now sufficiently advised in the premises doth find that the said objection to said north boundary
57 is well founded and that the survey of said north boundary was and is erroneous. It is therefore ordered by the court that said grant as to said north boundary shall be and the same is hereby ordered resurveyed and that the north boundary shall be an east and west line running through the old monument situated about a mile south of the house of Jesus Baca, in the settlement of Picacho del Sabinal and opposite and east of the point of the loma of Sabinal and on the Socorro and Albuquerque road said monument being the one recognized as the boundary between Belen and this grant said line through said monument to be extended due east and west until it intersects the east and west boundaries of said grant as surveyed. It is further ordered that the objections of the United States to the south and east boundaries be and the same are hereby overruled.

(Signed) JOSEPH R. REED,
Chief Justice."

Plaintiff thereupon offered in evidence the plat of the resurvey of the Sevilleta de la Joya Grant as approved by the Court of Private Land Claims and the Surveyor General of New Mexico, which plat is as follows:

(Here follows map marked p. 58.)

* * * * * * *

59 To which the defendant objected for the reasons herein given to the introduction of the records of the Court of Private Land Claims and for the reason that neither the said court nor the Surveyor General had jurisdiction to determine disputed boundaries between these private parties.

The witness March thereupon testified, over the same objection of the defendant, that the resurvey of the Sevilleta de la Joya Grant, as shown by the foregoing plat, located the north boundary of the Sevilleta de la Joya Grant exactly as the same was claimed to be in the protest of the owners of the Belen Grant hereinbefore referred to.

Plaintiff thereupon offered in evidence as the deposition of William H. Pope, a letter in words *as* figures as follows, to-wit:

"United States Court Chambers,

District of New Mexico.

William H. Pope, District Judge Santa Fe, N. Mexico.

March 22, 1913.

Honorable Neill B. Field, Albuquerque, New Mexico.

DEAR SIR: Referring to your telephone request of this morning for my recollection as to the proceedings in the Court of Private Land Claims connected with the survey of the La Joya or Sevilleta Grant, and especially as to my participation of the owners of the Belen Grant in such proceedings, I beg to say that I have carefully

60 examined the clerk's files of the Court of Private Land Claims relating to this Grant, now in the custody of the Surveyor General of New Mexico. I have also examined the United States Attorney's office files, now in possession of Mr. Francisco Delgado of this city, formerly stenographer in the office of the United States Attorney, and I have also examined the files of the Surveyor General with reference to the proceedings in his office in connection with this survey. I find the record to show as follows:

1. The grant in question was confirmed by the Court of Private Land Claims on December 4, 1893; no appeal was taken by the government, and on April 30, 1896, the Surveyor General of New Mexico gave notice that the survey under the decree had been completed and was open to objection as provided by Sec. 10 of the Land Court Act.

2. On July 25, 1896, and thus within the ninety days provided by said Section 10, Jacinto Sanchez and Alcario Sais, described as representatives of the owners, claimants and possessors of the Belen Grant, filed in the office of the Surveyor General of New Mexico a protest against the north boundary of the Sevilleta Grant as fixed by this survey, this being endorsed with the name of Max Frost as attorney for such protestants. This protest was never filed with the clerk of the Court of Private Land Claims until it reached him as stated in the next paragraph hereof.

3. On July 29, 1896, this survey was reported to the
61 General Land Office by the Surveyor General of New Mexico, and in such report the only objections noted as having been made before him were those of the Belen Grant above mentioned. The report of the Surveyor General was accompanied by these objections, and in due course such came back to the Court of Private Land Claims for determination as provided by the last paragraph of Section 10.

4. Subsequent to said ninety days, and on September 5, 1896, the United States filed in the office of the clerk of the Court of Private Land Claims its general objections to said survey. On September 13, 1897, it filed amended objections specifying that the north, south and east boundaries of the grant were incorrectly surveyed. Neither of these objections, either the original or amended, were filed with the Surveyor General or transmitted with his report to the Court under Section 10.

5. The cause thus came before the Court of Private Land Claims upon the objections of the Belen Grant, transmitted through the Surveyor General under Section 10, and the objections of the government, filed direct with the clerk of that court. The hearing upon these objections occurred in May, 1897, at which time the writer appeared on behalf of the government and Col. Max Frost for the Belen Grant. Colonel Frost co-operated with me in the hearings throughout, and, as shown by the stenographic transcript of the trial on file in the Surveyor General's office, introduced on behalf of his
62 clients the field notes of the Belen Grant and all its title papers. The witnesses presented in support of these objections were largely persons interested in the Belen Grant.

6. The objections were finally submitted on September 21, 1897, and on September 28, 1897, the objections to the north boundary were sustained and a re-survey thereof ordered, and the objections to the south and east boundaries were overruled. The oral announcement by Associate Justice Murray, in deposing of the objections, was as follows:

'In the matter of the survey in this case, the order will be entered setting aside the survey as to the north boundary line, and a line will be drawn from the north boundary line as run immediately north to the Sabernal Hill, and run south a mile, 38 chains and 87 links south of the north boundary as surveyed, I believe, to the point of the Sabernal Hill, that is testified to by nearly all the witnesses in the case, and from that point the line will be projected east and west to the intersection of the east and west line as surveyed. The objection as to the survey of the east and south line is disallowed. An order will be entered sustaining the survey as to that and fixing the line as the testimony tends to show at the old monument testified to which is recognized to be the boundary, which would take that boundary to the old monument, our present understanding is, as it is recognized by the old people there, wherever that may be; the testimony is that that is a well defined point from the old monu-
63 ment.'

A re-survey pursuant to this decision of the court having

been made, the United States on September 16, 1901, filed with the clerk of the Court of Private Land Claims, and also in the Surveyor General's office, objections to the amended survey. No objections to the amended survey were filed by the Belen Grant. On December 12, 1901, these objections were withdrawn and the amended survey approved by the Court of Private Land Claims.

The foregoing, taken from the record, accords with my recollection of the matter so far as my personal connection therewith goes. It may be added that Colonel Frost's participation in the trial, while not extending to the examination of witnesses, yet, as shown by the notes of the trial among the United States Attorney's files, included suggestions to counsel for the government as to questions to be propounded witnesses, sev- of whom were his clients interested in the Belen Grant. He attended at least some of the hearings before the Court of Private Land Claims, the trial lasting several days. He also, as above stated, introduced testimony on behalf of the grant. My recollection is that he made no argument in the case.

Very truly yours,

(Signed) W. H. POPE."

To which letter the defendant, by counsel, objected for the same reasons assigned as objections to the record of the Court of Private Land Claims, namely, that the court had no jurisdiction
64–100 to determine the issues involved in this case, and that its action cannot, nor could its action as shown by the record of that case, operate as against the defendant herein for the reasons heretofore given. But the defendants made no other objection to the form or substance of the said letter, but consented that the same might be read with the same legal effect as a deposition duly taken under the laws of New Mexico.

* * * * * * *

101 The judgment of the Court of Private Land Claims in the case of Felipe Peralta et al. v. The United States, entered on the 4th day of December, 1893, is in words and figures as follows, towit:

No. 55.

"In the United States Court of Private Land Claims.

FELIPE PERALTA AND TOMAS CORDOBA
vs.
THE UNITED STATES.

Confirmation of the Sevilleta Grant.

This cause coming on to be heard at the November term, A. D. 1893, to-wit, on the fourth day of December, A. D. 1893, held at Santa Fe, in the Territory of New Mexico, Thomas B. Catron appearing for the *the* plaintiffs, and Matt. G. Reynolds, Esq., on behalf

of the United States, and the pleadings and proofs taken at a former day of this term having been heard and submitted to the court, and the court having duly considered the same and being fully advised in the premises, and it appearing to the court that the petitioners are entitled to the relief sought and prayed for in their said petition, namely, that the validity and extent of said land grant be enquired into and decided, the court finds as follows:

First. That on May 25th, 1819, Carlos Gabaldon, a resident of Nuestra Senora de los Dolores de Sevilleta, in the name of
102 and at the request of all the residents of that place, petitioned the Alcalde of Belen, Miguel Aragon, asking that there be made to them the grant of land which they were according to law entitled to receive and that they receive those certain boundaries and land marks which had been designated to them in order that they might take his decree to the governor for his approval.

Second. On the 26th day of May, 1819, the said petition was referred by said Alcalde to the Governor of the Province, that he might decree that the grant prayed for might be executed to them.

Third. On May 29, 1819, Governor Melgares issued his decree directing the said Alcalde to assign the usual land to the petitioners and to cause them to place land marks and boundaries, drawing up the proper documents, which having completed he should transmit to the government for its knowledge and preservation.

Fourth. On June 4, 1819, in pursuance of said decree of the Governor of the Province of New Mexico, said Alcalde, Miguel Aragon, of the jurisdiction of Belen, and frontiers, proceeded to the settlement of Sevilleta, where he assembled all of the residents and inhabitants of said town, who were the following, to-wit: Carlos Gabaldon, Felipe Lucero, Tomas Aragon, Miguel Marquez, Jose Maria Moya, Juan Sanchez, Pablo Martinez, Josefa Otera, Miguel Ruibarid, Antonio Jose Apodaca, Domingo Peralta, Andres Gonzales, Francisco Macias, Juana Paula Lopez, Antonio Trujillo, Sal-
103 vador Armijo, Baltazar Lobato, Jose Aragon, Manuela Chavez, Guadalupe Montoya, Francisco Tafoya, Manuel Sais, Vicente Torres, Jose Manuel de Herrera, Euboaldo Martinez, Bartolome Chavez, Diego Benavides, Ramon Montano, Dionisio Chavez, Nerio Gallegos, Jacinto Truejaque, Lorenzo de la Torre, Santiago Lucero, Jose Antonio Apodaca, Felipe Gordoba, Juan Garcia, Juan Isidro Romero, Manuel Benavides, Bernardo Benavides, Antonio Zamora, Juan Sais, Felipe Apodaca, Gregorio Lucero, Salvador Maes, Juan Domingo Maes, Francisco Chavez, Jose Guadalupe Montoya, Bernardo Trujillo, Bernardo Sisneros, Juan Luis Lopez, Santiago Candelaria, Diego Mascarenas, Miguel Zamora, Clemente Benavides, Juan Luis Cerrillo, Juan Montoya, Andres Mascarenas, Juan Gutierres, Manuel Romero, Antonio Jose Garcia, Salvador Lucero, Vicente Torres, Juan Jose Trujillo, Juan Francisco Munis, Francisco Sisneros, Jose Lorenzo Sanchez, Juan Cruz Trujillo; to whom he communicated the commands given by the said governor in his decree, whereupon they unanimously and in accord accepted the grant, with the boundaries designated by said Alcalde, being the same which they requested, with the customary ceremonies.

Fifth. The said Alcalde then gave to the said persons before named the possession of the said land and ordered them to place land marks of stone and mortar on one side of the road at both points, the same to be to them a boundary and dividing line, which order they obeyed forthwith, placing the said land marks.

104 Sixth. The boundaries of the said tract as designated by said Alcalde and marked as aforesaid were and are: On the north the boundary of Sabinal, being a portion of the grant to Belen and more particularly designated by the ruins of the house of Felipe Romero, and the point of the Sabinal hill (la punta de la loma del Sabinal), lying due east and west of each other; on the east the Cerro Montoso (wooded hill), meaning thereby the summit of the Cerro Montoso; on the south the Arroyo de Alamillo, on the east side of the Rio Grande del Norte, and the Arroyo de San Lorenzo, on the west side of the Rio Grande del Norte, and on the west, the summit of the Sierra de los Ladrones, or Ladron Mountain; said land being situate in the County of Socorro in the Territory of New Mexico.

Seventh. That said grant became thereby a complete and perfect grant and the land therein embraced was severed from the public domain, and became the property of the said Carlos Gabaldon, Felipe Lucero, Tomas Aragon, Miguel Marquez, Jose Maria Moya, Juan Sanchez, Pablo Martinez, Josefa Otera, Miguel Ruibarid, Antonio Jose Apodaca, Domingo Peralta, Andres Gonzales, Francisco Macias, Juan Paula Lopez, Antonio Trujillo, Salvador Armijo, Baltazar Lobato, Jose Aragon, Manuela Chavez, Guadalupe Montoya, Francisco Tafoya, Manuel Sais, Vicente Torres, Jose Manuel de Herrera, Euboaldo Martinez, Bartolome Chavez, Diego Benavides, Ramon Montano, Dionisio Chavez, Nerio Gallegos, Jacinto Truejaque, Lorenzo de la Torre, Santiago Lucero, Jose Antonio Apodaca,

105 Felipe Cordoba, Juan Garcia, Juan Ysidro Romero, Manuel Benavides, Bernardo Benavides, Antonio Samora, Juan Sais, Felipe Apodaca, Gregorio Lucero, Salvador Maes, Juan Domingo Maes, Francisco Chaves, Jose Guadalupe Montoya, Bernardo Trujillo, Bernardo Sisneros, Juan Luis Lopez, Santiago Candelaria, Diego Mascarenas, Miguel Samora, Clemente Benavides, Juan Luis Carrillo, Juan Montoya, Andres Mascarenas, Juan Gutierres, Manuel Romero, Antonio Jose Garcia, Salvador Lucero, Vicente Torres, Juan Jose Trujillo, Juan Francisco Munis, Francisco Sisneros, Jose Lorenzo Sanches, Juan Cruz Trujillo; the persons above mentioned as the parties who were placed in possession thereof by the said Alcalde.

Eighth. That the said petitioners have sufficiently connected themselves with the said grantees, their descendants, legal representatives, heirs and assigns, to entitle them to involve the decision of this court as to the validity of this grant.

Ninth. That the said persons before mentioned as having been placed in possession of said grant, their descendnts, heirs and assigns, held possession of the said lands so granted and described from the time of the said grant and possession thereof, given as aforesaid, up to the time of the treaty of Guadalupe Hidalgo, in the year 1848, and from thence hitherto have continued to hold such possession.

Tenth. That although a preliminary survey of said tract of land has heretofore been made, which shows an area of 224,-
106 770.18 acres as so surveyed, as this court is not informed whether said survey was restricted to or extended beyond the land marks and natural objects herein designated as the boundaries of said grant, it is unable to state the exact area of said land, but it finds that the extent and quantity of said land is determined by the total amount of land embraced in the boundaries herein designated as the boundaries of said grant.

Eleventh. That the said grant has not heretofore been confirmed in whole or in part by the Congress of the United States or otherwise decided upon by any lawful authority of the United States.

Twelfth. It is therefore, on this the fourth day of December, A. D. 1893, hereby ordered, adjudged and decreed, and this court, by virture of the authority and power therein vested, does hereby order, adjudge and decree that the title and claim to the said land as described and set forth, with the boundaries aforesaid herein, is a good, valid and perfect title and claim to said lands under the treaty between the United States and the Republic of Mexico, and under the laws, ordinances, usages and customs of the governments of Spain and the Republic of Mexico, as its successor, and that the said title to the said tract of land as herein described and set forth and as further described and set forth in the said petition therefor, the grant thereof, and the said act of juridical possession of the same, be and the same is hereby established and confirmed
107 forever to the heirs and assigns of said Carlos Gabaldon, Felipe Lucero, Tomas Aragon, Miguel Marquez, Jose Maria Moya, Juan Sanchez, Pablo Martinez, Josefa Otero, Miguel Ruibarid, Antonio Jose Apodaca, Domingo Peralta, Andres Gonzales, Francisco Macias, Juana Paula Lopez, Antonio Trujillo, Salvador Armijo, Baltazar Lobato, Jose Aragon, Manuela Chavez, Guadalupe Montoya, Francisco Tafoya, Manuel Sais, Vicente Torres, Jose Manuel de Herrera, Euboaldo Martinez, Bartolome Chavez, Diego Benavides, Ramon Montano, Dionisio Chavez, Nerio Gallegos, Jacinto Truejaque, Lorenzo de la Torre, Santiago Lucero, Jose Antonio Apodaca, Felipe Cordoba, Juan Garcia, Juan Ysidro Romero, Manuel Benavides, Bernardo Benavides, Antonio Samora, Juan Sais, Felipe Apodaca, Gregorio Lucero, Salvador Maes, Juan Domingo Maes, Francisco Chavez, Jose Guadalupe Montoya Bernardo Trujillo, Bernado Sisneros, Juan Luis Lopez, Santiago Candelaria, Diego Mascarenas, Miguel Samora, Clemente Benavides, Juan Luis Carrillo, Juan Montoya, Andres Mascarenas, Juan Gutierres, Manuel Romero, Antonio Jose Garcia, Salvador Lucero, Vicente Torres, Juan Jose Trujillo, Juan Francisco Munis, Francisco Sisneros, Jose Lorenzo Sanchez, Juan Cruzz Trujillo,—to their heirs, assigns and legal representatives, discharged and free from any claim or demand against the same on the part of the United States.

This decree of confirmation shall not and does not confer
108 upon the original grantee, his heirs, assigns and legal representatives, any right or title to any gold, silver or quicksilver mines or minerals of the same, situated in, upon or within the

premises hereinbefore described, all such mines and minerals remaining the property of the United States.

By the Court,

(Sig.) JOSEPH R. REED,
Chief Justice of the United States
Court of Private Land Claims."

No appeal was prosecuted from this judgment by the United States.

Plaintiff thereupon called as a witness Silvester Esquibel, who being duly sworn, testified that his name is Silvester Esquibel, that he lives at La Joya and is the same Silvester Esquibel who testified before the Court of Private Land Claims on the 20th day of May, 1897, and subsequently, in a proceeding in that court had upon protest of certain claimants of the Belen Grant as to a survey of that grant which had been therefore made; that he remembered that Domingo Baca, Jesus Baca, Jacinto Sanchez and one other had testified on that occasion as such witnesses; that Jesus Baca y Garcia, Jacinto Sanchez, Domingo Baca, Luciano Chavez, Tomas Cordova, Gabriel Pino, and Nicolas Mascarenas, all of whom testified upon that occasion, are now dead.

The defendant, by its counsel, moved to strike out all of the testimony of this witness as incompetent, irrelevant and immaterial.

And this was all of the evidence in the case.

109 Thereupon the defendant, by counsel, moved the court for a verdict for the defendant in this case, for the reasons:

First. That the testimony introduced by plaintiff in this case fails to prove a title or right to the possession of the land in dispute in this litigation superior to the right of the defendant herein, or any title to said land whatsoever.

Second. For the reason that the testimony in this case shows that the Belen Grant was patented to the predecessors in title of the defendants in this case long prior to the claim of plaintiff herein, and that there has never been an adjudication by any court of competent jurisdiction divesting the defendant or its predecessors in title of the land so granted them by the United States.

Third. That the testimony and evidence of the plaintiff in this case is sufficient to establish a title in the plaintiff in this case or that they have any claim or right to the possession of the land in controversy.

Fourth. That the records introduced in this case on behalf of the plaintiff, are incompetent, irrelevant and immaterial, for the reason that they are records of a case tried in the Court of Private Land Claims, which was a court of limited and special jurisdiction, vested only with power to determine rights as between claimants to public land and the United States government.

Fourth. That the defendant, or its predecessors in title, were not parties to that suit, did not intervene therein and even had they done so, could not confer upon the Court of Private Land

110 Claims the jurisdiction and power to determine the rights of the claimants and owners of the Belen Grant as against

the rights of the claimants and owners of the Sevilleta de la Joya Grant. That the matters so offered in evidence do not constitute an estoppel against the defendants in this case for the reason that it is not shown that these defendants or their predecessors in title to the Belen Grant, were in any manner parties to that suit, nor that they were parties to the alleged protest against the survey of the Cebolleta de la Joya Grant, nor can they be bound by the recitals of two individuals who did appear and protest against said survey, for the interest of defendants, and their predecessors in title is an interest in real estate and the same cannot be shown by parol nor by mere recitals in a paper filed by persons in a court of law, to which these defendants or their predecessors in title are not parties and that such appearance by the individuals filing said protest, is not binding upon the defendants or their predecessors in title, either to divest them of their interest to the land in dispute or as an estoppel against them. In a case of this kind, it is necessary for the plaintiff to establish his right by the strength of his own title and he cannot depend upon the weakness of the defendant's title. That the evidence herein fails wholly to establish any title or right to the lands in question, but shows that the defendant had a right by reason of an Act of Congress confirming the Belen Grant and the patent issued therefor by the United States in the year 1871,
111 to the strip of land in question.

And the plaintiff moved the court to direct the jury to find a verdict in favor of the plaintiff.

And the court having heard the arguments of counsel, sustained the objections of the defendant to all of the evidence offered by the plaintiff with relation to the proceedings of the Court of Private Land Claims; to which action of the court the plaintiff then and there duly excepted and still excepts.

And the court thereupon overruled the motion of the plaintiff to direct the jury to find a verdict in favor of the plaintiff; to which action of the court the plaintiff then and there duly excepted and still excepts.

And the court also sustained the motion of the defendant to direct a verdict in favor of the defendant; to which action of the court the plaintiff then and there duly excepted and still excepts.

And the jury, by the direction of the court, having returned a verdict in favor of the defendant, the plaintiff filed a motion for new trial, which is in words and figures as follows, to-wit:

Comes now the plaintiff, by its attorney, and moves the court to set aside the verdict of the jury in the above entitled cause and to grant it a new trial therein, for the following reasons:

I.

Because the court sustained objections to, and excluded evidence as to the proceedings in the Court of Private Land Claims, offered by plaintiff.

II.

112 Because the court held that the Court of Private Land Claims had not jurisdiction to locate the common boundary between the Sevilleta de la Joya Grant and the Belen Grant and to establish the same in such a manner as to render its judgment and order res judicata to this case.

III.

Because the court refused to hold that the proceedings in the Court of Private Land Claims constituted an estoppel against the defendant in this case.

IV.

Because the court instructed the jury to find a verdict in favor of the defendant.

V.

Because the court refused to instruct the jury to find a verdict for the plaintiff.

VI.

Because the verdict is contrary to the law and the evidence in this case.

NEILL B. FIELD,
Attorney for Plaintiff.

And afterwards the court overruled and denied the said motion of the plaintiff for a new trial; to which action of the court the plaintiff then and there duly excepted and still excepts.

And forasmuch as the matters herein contained are not of record in said cause, the plaintiff prays that this, its bill of exceptions, containing all of the evidence offered on the trial, with the objections and exceptions of the parties, and the rulings of the court thereon, as well as the instructions of the court to the jury, and
113-116 the refusal of the court to instruct the jury as requested by the said plaintiff, with the exceptions of the plaintiff thereto duly taken at the time, and all of the proceedings upon the said trial material or proper to be preserved in a bill of exceptions, may be signed, sealed and enrolled by the court, by the judge of this court, and made a part of the record and proceedings herein, which is done this 27th day of August, 1913.

COLIN NEBLET, [SEAL.]
Judge of the District Court of the Sixth Judicial District of the State of New Mexico, who lawfully presided at the trial of this cause and in all of the proceedings set out in this bill of exceptions, in the absence of the Honorable Merritt C. Mechem, Judge of the Seventh Judicial District of the State of New Mexico.

We the undersigned attorneys for the defendant, The Board of Trustees of the Belen Land Grant, hereby agree that the above and foregoing may be signed, settled and sealed as the bill of exceptions in the above entitled cause.

Dated August 14th, 1913.

MANN & VENABLE,
By E. A. MANN,
Attorneys for Defendant.

117 STATE OF NEW MEXICO,
Seventh Judicial District Court,
County of Socorro, ss:

I, Edward L. Fortune, County Clerk and ex-Officio Clerk of the District Court, within and for the County of Socorro, State of New Mexico, do hereby certify that the above and foregoing are true and correct copies of: Complaint, Demurrer to Complaint, Answer, Reply, Stipulation, Exhibits referred to in reply, Demurrer to third and fourth paragraphs of reply, Order overruling Demurrer, Trial in part, Trial in full, Verdict, Motion for a New Trial, Final Judgment, Bill of Exceptions, Order allowing Appeal, and Bond for Costs on Appeal, in a case lately pending in this court, wherein The Board of Trustees of the Cebilleta de la Joya Grant for the benefit of the owners in common thereof was plaintiff and The Board of Trustees of the Belen Land Grant was defend-

118 & 119 ant, as the same remain of record and on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, this 4th day of October, A. D. 1913.

[SEAL.] EDWARD L. FORTUNE,
County Clerk and ex-officio Clerk of the District Court,
By W. D. NEWCOMB, *Deputy.*

120 And afterwards, on towit, on the said the 26th day of November, A. D., 1913, there was filed in the office of the Clerk of the Supreme Court of the State of New Mexico, an assignment of errors in the above entitled cause, which said assignment of errors, was and is in the following words and figures towit:

In the Supreme Court of the State of New Mexico.

No. 1639.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, for the Benefit of the Owners in Common Thereof, Appellant,
vs.
THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Appellee.

Assignment of Errors.

Comes now the appellant, the Board of Trustees of the Sevilleta de la Joya Grany, by Neill B. Field, its attorney, and shows the court

here that in the record, proceedings and judgment of the District Court of the County of Socorro and State of New Mexico in the above-entitled cause, there is manifest error, in this, towit:

I.

The court erred in sustaining the objections of the appelle to the admission in evidence of the proceedings of the Court of Private Land Claims.

II.

The court erred in holding that the Court of Private Land Claims had not jurisdiction to locate the common boundary between the Sevilleta de la Joya Grant and the Belen Land Grant.

121

III.

The court erred in refusing to hold that the action of the Court of Private Land Claims in ascertaining the location of the common boundary between the Belen Land Grant and the Sevilleta de la Joya Grant, and the establishing of that boundary, was within the power of the said Court of Private Land Claims.

IV.

The court erred in refusing to hold that the judgment of the Court of Private Land Claims approving the resurvey of the appellant's grant is res judicata.

V.

The court erred in refusing to uphold the validity of the authority of the said Court of Private Land Claims in so locating the said boundary.

VI.

The court erred in refusing to hold that the proceedings in the Court of Private Land Claims created an estoppel against appellee.

VII.

The court erred in deciding against the contention of the appellant as to the validity of the authority exercised by the Court of Private Land Claims under the statutes of the United States.

VIII.

The Court erred in refusing to direct a verdict for appellant.

IX.

The court erred in directing a verdict for appellee.

Wherefore appellant prays that the said record, proceedings and judgment of the said district court in the said cause may be seen and examined by this Honorable Court, the errors therein corrected, and that this appellant may be restored to all things which it has lost by reason thereof.

122 (Signed) NEILL B. FIELD,
Attorney for Appellant
Albuquerque, New Mexico.

And heretofore, on to wit, at a regular term of the Supreme Court of the State of New Mexico, begun and held on the Second Wednesday of January, A. D., 1914, on the forty-second day of the said regular term, the same being Wednesday, May, sixth, A. D., 1914, the following among other proceedings were had and entered of record towit:

No. 1639.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, for the Benefit of the Owners in Common Thereof Appellants,
vs.
THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Appellee.

Appeal from District Court, Socorro County.

This cause coming on before the court upon the transcript of record, assignment of errors and briefs of counsel, is argued by Neill B. Field, Esq., for appellants, and Edward A. Mann, Esq., for appellees, and submitted to the Court, and the Court, not being sufficiently advised in the premises, takes the same under advisement;

And afterwards, on towit, on the seventieth day of the said regular term, the same being Wednesday, July, fifteenth, A. D., 1914, the following among other proceedings were had and entered of record, as follows towit:

123 No. 1639.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, for the Benefit of the Owners in Common Thereof, Appellants,
vs.
THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT.

Appeal from District Court, Socorro County.

This cause having been argued by counsel, submitted to and taken under advisement by the court upon a former day of the present term, and the court being now sufficiently advised in the premises, announces its decision by Justice Hanna, Chief Justice Roberts and Justice Parker, concurring, affirming the judgment of the court

below, for reasons stated in the opinion of the court on file; It is therefore considered and adjudged by the court that the judgment of the district court in and for the county of Socorro, whence this cause came into this court, be, and the same hereby is affirmed, and that in accordance therewith, it is considered and adjudged by the court that the cause herein be dismissed at plaintiff's cost and that the defendant go hence without day, and recover from the plaintiff its costs in this behalf expended, for which let execution issue.

And afterwards, on to wit, on the 28th day of August, A. D., 1914, there was filed in the office of the Clerk of the Supreme Court of the State of New Mexico, a motion for rehearing in the above entitled cause, which said motion for rehearing was and is in the following words and figures, *following* towit:

In the Supreme Court of the State of New Mexico, January Term, A. D. 1914.

No. 1639.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, for the Benefit of the Owners in Common Thereof, Appellants,
vs.
BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Appellees.

Appeal from District Court, Socorro County.

124 *Motion for Rehearing.*

Comes now the appellant, by Neill B. Field, its attorney, and moves the court to grant a rehearing in the above entitled cause, for the following reasons:

I.

Because this Court, as is apparent from its opinion, misapprehended the contention of counsel for appellant, and therefore a question decisive of the cause duly submitted by counsel, has been overlooked by the court and the decision of the court is in conflict with controlling authorities cited in the brief of counsel for appellant.

II.

This Court has failed to discriminate between the legal effect of the act of confirmation, whereby the appellee's grant was confirmed and the action of the political department of the government in making a survey and issuing a patent to effectuate that act of confirmation.

III.

This Court has failed to give due effect to the decision of the Supreme Court of the United States cited in appellant's brief, which

abundantly supports the proposition that the survey and patent of the Belen Grant purporting to be made under authority of the act of confirmation, would have been open to question on the part of appellant in a proper proceeding in the ordinary courts if appellant had never invoked the jurisdiction of the Court of Private Land Claims.

IV.

The Court fails to recognize the Court of Private Land Claims as an appropriate tribunal created by authority of congress for the purposes, among other things, of establishing the location and boundaries of private land claims.

125

V.

The court evidently understood appellant's contention to be that the judgment of the Court of Private Land Claims constituted res adjudicata as to the title of the lands claimed by plaintiff, whereas the contention is that it is res adjudicata only as to the identity of the lands. Appellant does not contend that the judgment of the Court of Private Land Claims established title to the lands in controversy, but only the location of the common boundary between the two grants, and asserts that the protest of Jacinto Sanchaes et al. sets up every fact necessary to constitute a practical location of that boundary, by which the appellee is bound.

Appellant files herewith a printed brief in support of this application as permitted by the rules of the court.

(Signed) NEILE B. FIELD,
Attorney for Appellant.

And Afterwards, on to-wit: on the One hundred and fourteenth day of the said regular term, the same being the twenty-eighth day of September, A. D., 1915, the following among other proceedings were had and entered of record, *following* to-wit:

No. 1639.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, Appellant,

vs.

BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Appellee.

Appeal from District Court, Socorro County.

This cause coming on before the court upon the motion of appellant herein for a rehearing, and the court having had said motion under advisement and being now sufficiently advised in the premises, grants the same. It is therefore considered and adjudged by the court, that the motion of appellant herein for a rehear-

126 ing, be and the same hereby is granted.

And Afterwards, on to-wit, on the One hundred and thirty-fourth day of the said regular term, the same being the eighth day of December, A. D., 1914, the following among other proceedings were had and entered of record, to-wit:

No. 1639.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Appellee. FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, Appellant,

vs.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Appellee.

Appeal from District Court, Socorro County.

This cause coming on before the court for a reargument upon the transcript of the record, assignment of errors, and briefs of counsel, is re-argued by Neill B. Field, Esq., for appellant and Edward A. Mann, Esq., for appellee, and re-submitted to the court, and the court not being sufficiently advised in the premises, takes the same under advisement.

And Afterwards, on to-wit, at a regular term of the Supreme Court of the State of New Mexico, begun and held at Santa Fé the seat of government, on the second Wednesday of January, A. D., 1915, on the twenty-eighth day thereof, the same being the tenth day of March, A. D., 1915, the following among other proceedings were had and entered of record, to-wit:

127 No. 1639.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, Appellant,

vs.

BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Appellee.

Appeal from District Court.

This cause again coming on before the court, upon a rehearing, and the same having been re-argued by counsel, and re-submitted to and taken under advisement by the court, upon a former day of the present term, and the court being, now sufficiently advised in the premises announces it decision by Justice Hanna, Chief Justice Roberts, and Justice Parker concurring, adhering to the former decision of the court, for reasons stated in the opinion of the court on file; It is therefore considered and adjudged by the court that the former decision of this court in the above entitled cause be, and the same hereby is adhered to.

And Heretofore, on to-wit, on the Fifth Day of July, A. D., 1915, there was filed in the office of the Clerk of the Supreme Court of the State of New Mexico, an opinion by the court in the above entitled cause, which said opinion by the court was and is in the following words and figures to-wit:

In the Supreme Court of the State of New Mexico, January Term A. D., 1914.

No. 1639.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, Appellant,

vs.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Appellee.

Appeal from District Court, Socorro County.

Syllabus by the Court.

1. A confirmation by the Court of Private Land Claims was
128 to be always subject to and was not to affect any conflicting private interests, or claims held adversely, but to operate only as a quit claim, or release of all claim of title by the United States.

2. A judgment or decree set up as a bar by plea, or relied on as evidence by way of estoppel, must have been made by a court of competent jurisdiction upon the same subject matter, between the same parties for the same purpose.

Statement of Facts.

The Belen claim, or land grant, was made by the crown of Spain on the 9th day of December, 1740, and was reported favorably by the United States Surveyor General of New Mexico, for confirmation on the 30th day of September, 1857, and confirmed by Act of Congress on the 22nd day of December, 1758, and surveyed by the United States for 194,663 acres, and a patent for such amount of land was made to the Town of Belen by the United States government on the 25th day of April, 1871.

It also appears that on the 29th day of May, 1819, the crown of Spain made a grant of land to the residents and inhabitants of Nuestra Señora de los Dolores de Sevilleta. The amount of land claimed under this grant is 224,770.13 acres, according to the survey made by authority of the United States. This grant was never confirmed by Act of Congress, but the report of the Surveyor General of New Mexico on said grant was transmitted by the Secretary of the Interior to Congress in January, 1875.

No further action in regard to said land was taken by any authority constituted by law for the adjustment of land titles in the Territory (now State) of New Mexico until the filing of the petition of Felipe Peralta and Tomas Cordova, against the United States in the Court of Private Land Claims, praying that the
129 validity of said Sevilleta grant be inquired into and that said grant with the boundaries be confirmed unto them, their co-owners and co-possessors. The Court of Private Land Claims took jurisdiction of this petition and proceeded to adjudicate the matter in question, and ordered a survey of the said grant, which was made.

On the 25th day of July 1896, a protest was filed by Jacinto Sanchez and Alcario Sais, described as representatives of the owners, claimants and possessors of the Belen Grant, before the Surveyor General of the United States for the Territory of New Mexico, objecting to the survey and plat of the Sevilleta Land Grant insofar as the same overlapped the Belen Grant.

The decree of confirmation of the Sevilleta Land Grant by the Court of Private Land Claims shows that that portion of the Belen Grant now in dispute in this action was taken from the Belen Grant, as confirmed by Act of Congress, and included within the Boundaries of the Sevilleta Grant.

The Sevilleta Grant was confirmed by the United States Court of Private Land Claims on December 4, 1893, and the survey thereof was approved by the same court on December 12, 1901, and shows a conflict with the Belen Grant as to 11,005.98 acres; the northern boundary of the Sevilleta Grant extending north of the southern boundary of the Belen Grant.

Upon the action of the Court of Private Land Claims and the record of this procedure in the case of Felipe Peralta and Tomas Cordova vs. The United States, the plaintiff bases its action in ejectment and files its complaint in the usual form describing the entire grant to the plaintiff, and prays judgment against the defendants for the recovery of the lands described in its complaint.
130 The defendant filed its answer to this complaint, denying that plaintiff was the owner or entitled to the possession of the land, described in the complaint, and set up adverse possession, alleging title founded upon a patent from the United States to the Town of Belen. To this answer, the plaintiff replied, setting up the action of the Court of Private Land Claims as res judicata and not subject to re-examination or inquiry in any court, and further alleging by way of reply to the answer that the predecessor in title to the plaintiff and the defendant practically located upon the ground the boundary line between these two grants, and that such boundary line had been acquiesced in by the predecessors in title of the plaintiff and of the defendant long before the institution of this suit. And that this defendant was estopped thereby from asserting title or questioning the boundary line designated by plaintiff, but there is nothing in the record that shows such practical location.

The appellant contends, 1st, that the Court of Private Land

Claims had jurisdiction of the original petition of Felipe Peralta and Tomas Cordova for the confirmation of the Sevilleta Land Grant; 2nd, that the court also had jurisdiction to hear and adjudicate the objections filed and to order the re-survey; 3rd, that the Court of Private Land Claims ascertained as a fact by a proceeding essentially judicial in its nature, the common boundary between the Sevilleta Grant and the Belen Grant; 4th, that the owners of the Belen Grant are estopped to question the location of this boundary line, or to claim any land to the south of that line, as established by the Court of Private Land Claims; 5th, that Jacinto Sanchez and Alcario Sais represented in the Court of Private Land Claims the defendant in this case and its predecessors in title.

131 *Opinion of the Court.*

HANNA, *J.*:

1. The first question for our consideration is with respect to the nature and extent of the jurisdiction of the Court of Private Land Claims.

Appellee contends that this court was one of special and limited jurisdiction, without power to do anything except settle controversies between claimants to a Spanish or Mexican grant and the United States; and, that its decree operated only as a quit claim, so far as the government was concerned, the court being precluded, by the statute creating it from attempting to decide disputes between rival colaimants to the same lands.

For which reason the Court of Private Land Claims has no jurisdiction of the original petition of Felipe Peralts and Tomas Cordova for the confirmation of the Sevilleta Grant so far as it conflicted with the Belen Grant.

In support of this contention our attention is directed to Subdivision 4 and 5 of Section 13 of the Congressional Act creating this court. These subdivisions read as follows:

"Fourth. No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority.

Fifth. No proceeding, decree, or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be reserved and saved to the same effect as if this act had not been passed; but the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or rights in such lands."

The Supreme Court of the United States, in construing Subdivision 4, supra, said:

132 "The peremptory declaration of congress, that 'no claim shall be allowed for any land, the right to which has hitherto been lawfully acted upon and decided by Congress, necessarily prohibits the court from passing upon the merits of any such claim." United States vs. Baca 184 U. S. 659.

And, again in the case of United States vs. Conqay, 175 U. S. 71, the same court said:

"When the title has once been confirmed by Congress it should be respected by the Court of Private Land Claims as if it were a confirmation by the court itself, and conflicting claimants are at liberty to resort to the ordinary remedies at law or in equity, according to the nature of the claim."

By the appellant it is contended that the original petition of Peralta and Cordova was an original proceeding under Section 8, of the Act creating the court. This section is as follows:

"That any person or corporation claiming lands in any of the states or territories mentioned in this act under a title derived from the Spanish or Mexican Government that was complete and perfect at the date when the United States acquired severeignty therein, shall have the right (but shall not be bound) to apply to said court in the manner of this act provided for other cases for a confirmation of such title; and on such application said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location and boundaries, in the same manner and with the same powers as in other cases in this act mentioned.

If in any such case, a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed — by the United States, *and always subject to and not to affect any*
133 *conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States; and no private right of any person as between himself and other claimants, or persons, in respect of any such lands, shall be in any manner affected thereby.*

It shall be lawful for and the duty of the head of the Department of Justice, whenever in his opinion the public interests or the rights of any claimant shall require it, to cause the attorney of the United States in said court to file in said court a petition against the holder or possessor of any claim or land in any of the states or territories mentioned in this act who shall not have voluntarily come in under the provisions of this act, stating in substance that the title of such holder or possessor is open to question, or stating in substance that the boundaries of any such land, the claimant or possessor to or of which has not brought the matter into court, are open to question, and praying that the title to any such land, or the boundaries thereof, if the title be admitted, be settled and adjudicated; and thereupon the court shall, on such notice to such claimant or possessor as it shall deem reasonable, proceed to hear, try, and determine the questions stated in such petition or arising in the matter, and determine the matter according to law, justice, and the provisions of this act, *but subject to all lawful rights adverse to such claimant or possessor, as between such claimant and*

any other claimant or possessor and subject in this respect to all the provisions of this section applicable thereto." 6 Fed. Stat. An. 54.

It is to be observed by an examination of the italicized portion of Section 8, that a confirmation by the Court of Private Land
134 Claims was to be always subject to and not to affect any conflicting private interests, or claims held adversely, but to operate only as a quit claim, or release of all claim of title by the United States. The limitation upon the jurisdiction of the Court of Private Land Claims, as thus pointed out in Section 8, again appears in Subdivision 5 of Section 13, quoted supra, and there can be no question that the court was thus limited as is contended by appellee.

We are, therefore, unable to agree with this position of appellant upon the question of jurisdiction.

It is next ably argued by appellant that the Court of Private Land Claims had jurisdiction to hear and adjudicate the objections filed by Sanchez and Sais and to order the resurvey.

In this connection appellant contends that the case presented to the Court of Private Land Claims by the petition of Sanchez and Sais was not one of overlapping grants; and, that the petitioners did not claim that their lands had been previously disposed of by the United States, but was a case invoking the jurisdiction of the court for the purpose of locating a common boundary line between the two grants and to confine the decree of confirmation to that common boundary line.

We think this is quite true but it now develops that as a result of the re-survey, thur brought about, something like 11,000 acres previously included within the Belen Grant, as confirmed by Congress, was confirmed to the Sevilleta claimants.

In this connection appellees argues that appellant's contention that this was an original proceeding under Section 8, supra, does not apply because, while confirmations of grants, having a perfect title are sanctioned by the section, referred to, nevertheless all lands previously disposed of by the United States are to be excepted from such confirmation. The act, in question, constituting and creating this court having withheld jurisdiction over lands previously
135 granted by the United States, the act of the objectors could not confer upon the court a jurisdiction not conferred by the congressional Act.

2. Appellee further argues that the main object of the Court of Private Land Claims was to determine whether or not the land included in the Sevilleta grant was private or public property, and if found to be private property to confirm the grant. As we understand appellant's position it is not inconsistent with the legal principles urged by appellee, but is essentially that the Act of Congress did not require the defendant to invoke the jurisdiction of the court to locate the true boundary, and having elected to invoke the jurisdiction, the appellee is bound by the result, upon the principle of res adjudicata.

We cannot agree with appellant in this, as it is axiomatic that jurisdiction cannot be conferred by consent.

The rule upon the subject of res adjudicata was well stated by the Supreme Court of the United States in Washington, Alecandria, and Georgetown S. P. So. vs. Sickles et al., 65 U. S., 333, at 342, in the following language:

"A judgment or decree set up as a bar by plea, or made by a court of competent jurisdiction upon the same subject matter, between the same parties for the same purpose."

It is our opinion that the Court of Private Land Claims was so plainly limited in its jurisdiction in both instances of previous grant by the government and private rights of other claimants that it must be held that there was a total want of jurisdiction which clearly could not be conferred by consent and that the doctrine of res adjudicata could not, therefore, apply.

We do not deem it necessary to pass upon appellee's further contention that the action of the Court of Private Land Claims in ordering a re-survey was a mere finding that the same should be
136 made, fixing a certain line as a boundary, and not a judgment decreeing the land in question.

The third point urged in appellant's brief, is that the Court of Private Land Claims ascertained as a fact, by a proceeding essentially judicial in its nature, the common boundary between the two grants. Appellant disclaims any intention of asserting that the Court of Private Land Claims had power to annul the patent to the owners of the Belen Grant, but does contend that the court had the power to ascertain the fact (of boundary) upon which the law, in this subsequent proceeding declared the result.

We are of the opinion that this point is disposed of by our conclusion upon the second point and that the Court of Private Land Claims having no jurisdiction over the subject matter of the controversy, could not exercise judicial power over it.

It is next submitted that the owners of the Belen Grant are estopped to question the location of the northern boundary line or to claim any land to the south of the line as established. This question is ably and earnestly presented by counsel upon the theory of estoppel by conduct notwithstanding the alleged lack of jurisdiction, but we find ourselves unable to agree with the reasoning of appellant. We agree with appellee, in this aspect of the case, and quote, with approval, from its brief upon this point.

"The mere objection to the first survey of the La Joya Grant, -ven if it be conceded that Sanchez and Sais were authorized to, and did act for all the claimants of the Belen Grant, was not a submission of the question of title to the land here in controversy to a court of competent jurisdiction for settlement. This objection, even if the claimants to the Belen Grant authorized it, was at most but a protest against the United States confirming the survey and thus casting a cloud on their title. Counsel concedes that the Belen Grant was under no obligation to protest and if they did

not protest the confirmation of the Sevilleta de la Joya Grant
137 would not affect their rights, if this argument is correct, then the Belen claimants were under no obligation to protest against the last survey and not having done so are in no way bound by the decree. As we have seen the decree by the very terms of the statute could have no effect 'other or further than as a release of all claims of title by the United States; and no private right of any person as between himself and other claimants or persons, in respect of such lands, shall be in any manner affected thereby. Sec. 8, Act. Mar. 3, 1891, VI Fed. St. An. 54."

Appellant as a final proposition urges that Sanchez and Sais represented in the Court of Private Land Claims the defendant in this case, appellee here, and its predecessors in title.

We do not understand that this contention of appellant was controverted by appellee, and deem it immaterial by reason of our conclusion upon the question of jurisdiction and our opinion that jurisdiction could not be conferred by consent.

We do, therefore, conclude that the judgment of the trial court must be affirmed, and, it is so ordered.

RICHARD H. HANNA, *Justice.*

We Concur:

CLARENCE J. ROBERTS,
Chief Justice.
FRANK W. PARKER, *Justice.*

And afterwards, *on* to wit, on the tenth day of March, A. D. 1915, there was filed in the office of the clerk of the Supreme Court of the State of Mexico, an opinion of the court on rehearing, adhering to the former decision of this court which said opinion adhering was and is in the following words and figures *following* to wit:

138 In the Supreme Court of the State of New Mexico, January Term, A. D., 1915.

No. 1639.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT for the Benefit of the Owners in Common Thereof, Appellant,
vs.
THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, Appellee.

Appeal from District Court, Socorro County.

On Rehearing.

After a careful consideration of the brief and argument of appellant on rehearing, we conclude that the court has not misappre-

hended the contention of appellant, and we therefore adhere to our former opinion.

RICHARD H. HANNA, *Justice.*

We Concur:

CLARENCE J. ROBERTS, *C. J.*
FRANK W. PARKER, *J.*

139 SUPREME COURT, STATE OF NEW MEXICO, *ss:*

I, José D. Sena, clerk of said court, do hereby certify that the foregoing pages, numbered one to 138, inclusive, are a true, full and complete transcript of the record and proceedings, in the case of The Board of Trustees of the Sevilleta de la Joya Grant for the Benefit of the Owners in Common Thereof, appellant, vs. The Board of Trustees of the Belen Land Grant, appellee, and also the opinions of the court rendered therein, as the same now appear on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Santa Fé, New Mexico, this May 10th, 1915.

[Seal Supreme Court, State of New Mexico.]

JOSÉ D. SENA,
Clerk Supreme Court of New Mexico.

140 Filed in my Office this May 1, 1915. José D. Sena, Clerk.

In the Supreme Court of the State of New Mexico.

BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, Appellant,

vs.

BOARD OF TRUSTEES OF THE BELEN GRANT, Appellee.

Petition for Writ of Error.

Prayer and Assignments.

Considering itself aggrieved by the final decision of the Supreme Court of New Mexico in rendering judgment against it in the above entitled cause, the appellant, The Board of Trustees of the Sevilleta de La Joya Grant, for the Benefit of the Owners in Common Thereof, hereby prays a writ of error from the said decision and judgment, to the Supreme Court of the United States and for an order fixing the amount of the supersedeas bond; and the said Board of Trustees of the Sevilleta de La Joya Grant, for the benefit of the Owners in Common Thereof, assigns the following errors in the record and the proceedings of said cause:

I.

The Court erred in refusing to uphold the validity of the authority exercised by the Court of Private Land Claims under the provisions of section eight (8) of the Act of Congress creating said Court, being an Act entitled "An Act to establish a court of Private Land
141 Claims and to provide for the settlement of private land claims in certain states and territories; approved March 3, 1891." And in holding contrary to the contention of the plaintiff in error distinctly set up and made, that the owners of the Belen Grant were not bound or affected by the final judgment of the said Court of Private Land Claims.

II.

The Court erred in refusing to uphold the validity of the authority exercised by the Court of Private Land Claims under the provisions of section ten of said Act of Congress creating said Court, being an Act entitled "An Act to establish a court of Private Land Claims and to provide for the settlement of private land claims in certain states and territories; approved March 3, 1891," and in holding contrary to the contention of the plaintiff in error distinctly set up and made, that the owners of the Belen Grant were not bound by the judgment and decision of the said Court of Private Land Claims, locating the common boundary between the Sevilleta de La Joya Grant and the Belen Grant, notwithstanding such common boundary was so located at the instance of the owners of the Belen Grant upon objections filed by persons representing the owners of the Belen Grant strictly in pursuance of the provisions of said section ten (10) of the said Act of Congress approved March 3, 1891.

III.

The Court erred in holding contrary to the contention of the plaintiff in error distinctly set up and made, that the court of Private Land Claims created by the said Act of Congress had not power and jurisdiction to hear and determine by a proceeding essentially
142 judicial in its nature, objections filed by the owners of the Belen Grant to the Survey of the Sevilleta de La Joya Grant, and that the judgment of the said Court of Private Land Claims upon such hearing did not constitute an adjudication binding upon the owners of the said Belen Grant.

IV.

The Court erred in refusing to hold in accordance with the contention of the plaintiff in error distinctly set up and made, that the survey by officers of the United States and the patent issued in pursuance of such survey by the United States to the defendant in error so far as it embraced any land lying south of the said common boundary line between the Sevilleta de La Joya Grant and the Belen Grant, is void in law and conveyed no title to the defendant in error.

V.

The Court erred in refusing to hold in accordance with the contention of the plaintiff in error distinctly set up and made, that the judgment of the court of Private Land Claims approving the resurvey of the Sevilleta de La Joya Grant, was a valid exercise of authority, conferred upon the said court of Private Land Claims by the said Act of Congress, approved March 3, 1891, and was binding upon the owners of the Belen Grant by way of estoppel.

For which errors the Trustees of the Sevilleta de La Joya Grant, for the Benefit of the Owners in common Thereof, prays that the said judgment of the Supreme Court of the State of New Mexico, dated July 15th, A. D., 1914, be reversed and that judgment be rendered in favor of the Trustees of the Sevilleta de La Joya Grant, for the
143 Benefit of the Owners in Common Thereof against the Trustees of the Belen Grant and for costs.

NEILL B. FIELD,
Attorney for the Trustees of the Sevilleta de La Joya Grant, for The Benefit of the Owners in Common Thereof.

STATE OF NEW MEXICO, *ss:*

In the Supreme Court.

Let the writ of error issue upon the execution of bond by the Trustees of the Sevilleta de La Joya Grant, For the Benefit of the Owners in Common Thereof, in the sum of One Thousand Dollars ($1,000), such bond when approved to act as a supersedeas.

Dated May 1st, 1915.

CLARENCE J. ROBERTS,
Chief Justice of the State of New Mexico.

144 Know all men by these presents, That we, The Board of Trustees of the Sevilleta de la Joya Grant for the Benefit of the Owners in Common Thereof, as principal, and Tomas Bacca y Baca, and David Romero, as sureties are held and firmly bound unto the Board of Trustees of the Belen Land Grant, in the full and just sum of One Thousand ($1,000) Dollars, to be paid to the said Board of Trustees of the Belen Land Grant certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifth day of April, nine- hundred and fifteen.

Whereas, lately at a hearing in the Supreme Court of the State of New Mexico, in a suit depending in said Court, between the Board of Trustees of the Sevilleta de la Joya Grant for the Benefit of the Owners in Common Thereof, Appellant, vs. The Board of Trustees of the Belan Land Grant, Appellee, a Judgment was rendered against

the said Board of Trustees of the Sevilleta de la Joya Grant for the benefit of the Owners in Common Thereof, and the said Board of Trustees of the Sevilleta de la Joya Grant for the Benefit of the Owners in Common Thereof have obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Board of Trustees of the Belen Grant citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Board of Trustees of the Sevilleta de la Joya Grant, for the Benefit of the Owners in Common thereof shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make
145 their plea good, then the above obligation to be void; else to remain in full force and virtue.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT,
For the Benefit of the Owners in Common Thereof,
By SILVESTRE ESQUIBEL, *President.* [SEAL.]
TOMAS BACA Y BACA. [SEAL.]
DAVID ROMERO. [SEAL.]

Sealed and delivered in presence of
LEANDRO ESQUIBEL.
MELITON BARELA.

Approved by
CLARENCE J. ROBERTS,
Chief Justice of the Supreme Court of New Mexico.

STATE OF NEW MEXICO,
County of Socorro, ss:

Be it remembered, that on this 5th day of April, 1915, personally appeared before the undersigned, a notary public within and for the County and State aforesaid, Silvestre Esquibel, President of the Board of Trustees of the Sevilleta de la Joya Grant for the Benefit of the Owners in Common Thereof, and Thomas Baca y Baca and David Romero to me well and personally known to be the persons named in and who have executed the within instrument and severally acknowledged that they executed the same for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and seal, the day and year last above written.

[SEAL.] F. B. BACA,
Notary Public, Socorro County, New Mexico.

My Commission expires 11-18-1919.

Filed in my Office May 1st, 1915. José D. Sena, Clerk.

146 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New Mexico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of New Mexico, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Board of Trustees of the Sevilleta de La Joya Grant, for the Benefit of the Owners in Common Thereof, Appellant, and, The Board of Trustees of The Belen Land Grant, Appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity was claimed under the Constitution, or any treaty
147 or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the said The Board of Trustees of the Sevilleta de La Joya Grant, for the Benefit of the Owners in Common Thereof, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within sixty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the First day of May, in the year of our Lord one thousand nine hundred and fifteen.

[Seal United States District Court, District of New Mexico.]

HARRY F. LEE,
Clerk United States District Court,
District of New Mexico.

Allowed by

CLARENCE J. ROBERTS,
Chief Justice of the Supreme Court of New Mexico.

[Endorsed:] Supreme Court of the United States, October Term, 1915. The Board of Trustees of the Sevilleta de La Joya Grant, for the Benefit of the Owners in Common Thereof, Plaintiff in Error, vs. The Board of Trustees of the Belen Land Grant, Defendant in Error. Writ of Error.

148 SUPREME COURT, STATE OF NEW MEXICO, *ss:*

I, José D. Sena, Clerk of said court do hereby certify that there was lodged with me as such clerk on May 1st, 1915, in the matter of The Board of Trustees of the Sevilleta de La Joya Grant, for the Benefit of the Owners in Common Thereof, vs. The Board of Trustees of the Belen Land Grant:

1. The original Bond of which a copy is herein set forth.

2. Two copies of the writ of error as herein set forth, one for the defendant, and one for file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Santa Fé, New Mexico, this the 10th day of May, A. D., 1915.

[Seal Supreme Court, State of New Mexico.]

JOSÉ D. SENA,
Clerk Supreme Court of New Mexico.

149 UNITED STATES OF AMERICA, *ss:*

To the Board of Trustees of the Belen Land Grant, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of New Mexico wherein The Board of Trustees of the Sevilleta de La Joya Grant, for the Benefit of the Owners in Common Thereof, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Clarence J. Roberts, Chief Justice of the Supreme Court of the State of New Mexico, this 1st day of May, in the year of our Lord one thousand nine hundred and fifteen.

[Seal Supreme Court, State of New Mexico.]

CLARENCE J. ROBERTS,
Chief Justice of the Supreme Court of the State of New Mexico.

ALBUQUERQUE, NEW MEXICO, May —, 1915.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

EDWARD A. MANN,
Attorney for the Board of Trustees of the Belen Land Grant.

150 UNITED STATES OF AMERICA, *ss:*

Supreme Court of New Mexico.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the with- entitled case, together with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of New Mexico, in the City of Santa Fé, this the 10th day of May, 1915.

[Seal Supreme Court, State of New Mexico.]

JOSÉ D. SENA,
Clerk Supreme Court of New Mexico.

151 In the Supreme Court of the United States.

No. 989.

BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, for the Benefit of the Owners in Common Thereof, Plaintiff in Error,

vs.

BOARD OF TRUSTEES OF THE BELEN GRANT, Defendant in Error.

Stipulation as to Printing Record.

It is hereby stipulated and agreed by and between Neill B. Field, counsel for plaintiff in error and Edward A. Mann, counsel for defendant in error, that in order to save expense in the printing of the record herein, the following portions of the record, the same being sufficient to show the errors complained of, shall be printed and no more, to-wit:

The citation and acceptance of service thereof.

The writ of error and Clerk's return thereon.

The Complaint, answer and reply, omitting all exhibits.

The demurrer to the reply and all orders of the District Court and the Supreme Court of the State of New Mexico entered in the progress of the case, including the final judgment in each court.

The caption of the bill of exceptions.

So much of the evidence contained in the bill of exceptions as herein indicated and none other, to-wit: Beginning with the testimony of the witness John W. March at page 42 of the record as printed in the Supreme Court of New Mexico, down to and including the objection to the letter of W. H. Pope read as a deposition,
152 which objection begins at the bottom of page 67 of the record as printed in the Supreme Court of New Mexico, but omitting the plats of the surveys of the Sevilleta de La Joya Grant and also the plat of the survey of the Belen Grant.

Also the transcript of the judgment of the court of Private Land

Claims found on pages 107 to 114, both inclusive of the record as printed in the Supreme Court of New Mexico.

Also all of the remainder of the bill of exceptions beginning at the top of page 115 of the record as printed in the Supreme Court of New Mexico, down to and including the certificate and signature of the Judge of the District Court to the bill of exceptions.

Also the respective certificates of the Clerk of the District Court and of the Clerk of the Supreme Court of New Mexico as the same appear in the transcript.

It being the true purpose and intent of this stipulation to avoid printing in the transcript for use in the Supreme Court of the United States any matter contained in the record, not necessary to be examined by the Court on this writ of error, but it is expressly stipulated and agreed that if from oversight or omission, any necessary part of the record be not thus printed, the plaintiff in error has a right to print the same and it may be required by the defendant in error to print any further or additional portions thereof which in the opinion of counsel for defendant in error, the court should examine.

NEILL B. FIELD,
Counsel for Plaintiff in Error.
EDWARD A. MANN,
Counsel for Defendant in Error.

153 [Endorsed:] No. 989/24,733. In the Supreme Court of the United States. Board of Trustees of the Sevilleta de La Joya Grant, for the Benefit of the Owners in Common Thereof, Plaintiff in Error, vs. Board of Trustees of the Belen Grant, Defendant in Error. Stipulation as to printing Record. Neill B. Field, Attorney for Plaintiff in Error.

154 [Endorsed:] File No. 24,733. Supreme Court U. S., October term, 1914. Term No. 989. Board of Trustees of the Servil-etta de La Joya Grant, etc., Pl'ff in Error, vs. The Board of Trustees of the Belen Grant. Stipulation as to parts of record to be printed. Filed May 15, 1915.

Endorsed on cover: File No. 24,733. New Mexico Supreme Court. Term No. 468. The Board of Trustees of the Sevilleta de La Joya Grant, for the benefit of the Owners in Common thereof, plaintiff in error, vs. The Board of Trustees of the Belen Land Grant. Filed May 17th, 1915. File No. 24,733.

Supreme Court of the United States, October Term, 1916.

No. 129.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT for the Benefit of the Owners in Common Thereof, Plaintiff- in Error,

vs.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT.

Additional Parts of Record.

* * * * * * *

Whereupon plaintiff offered in evidence the proceedings before the Surveyor General upon which the said Act of Congress is based, which proceedings are in words and figures as follows, to-wit:

"New Mexico Private Land Claims.

Letter from the Secretary of the Interior, transmitting papers in reference to certain private land claims in New Mexico.

February 9, 1859.—Referred to the Committee on Private Land Claims.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, February 5, 1858.

SIR: I have the honor to transmit herewith, for the action of Congress, contemplated by the 8th section of the Act of July 22, 1854, the transcripts of thirteen private laid claims in New Mexico, designed for the House of Representatives, as indicated in the letter of the Commissioner of the General Land Office, of the 21st of November last, a copy of which is herewith enclosed.

Similar documents, submitted by the Commissioner in the same letter, for the Senate of the United States, have been this day transmitted to the proper officer of that body.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. James L. Orr, Speaker of the U. S. House of Representatives.

GENERAL LAND OFFICE,
November 21, 1857.

SIR: I have the honor to transmit herewith, in duplicate, the papers in reference to thirteen private land claims in New Mexico, with the request that the same may be laid before Congress. These claims have been examined and approved by the Surveyor General of New Mexico, and were sent to this office with his annual report,

dated the 30th of September last, with a view to submission for legislative confirmation.

The documents in support of these private land claims are put up in two separate packages, embracing numbers 8, 11, 16, 25, 39, 40, 41, 43, 44, 48, 50, 53, and 54 and marked 'House of Representatives' and 'United States Senate;' each of which claims is accompanied by a schedule of documents as follows:

Private Land Claims in New Mexico.

* * * * * * *

No of claim.	Name.	No of documents accompanying.	Description of documents accompanying each claim.
43	Town of Belen	5	No. 1. Grant, original. 2. Grant, translation. 3. Notice. 4. Testimony. 5. Decision.

* * * * * * *

I have the honor to be, very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. Jacob Thompson, Secretary of the Interior."

"No. 2. Grant—Translation.

TERRITORY OF NEW MEXICO,
County of Valencia:

To His Excellency the Governor and Captain General:

Captain Diego de Torres and Antonio de Salazar, and the other signers hereto, before the greatness of your excellency with the greatest proper submission state that, whereas we have large families, and having no convenient lands wherewith to support them, and having examined an uncultivated and vacant tract of land at the point of the Rio Abajo, and being unappropriated, we register the same, and petition for a grant in the royal name of his Majesty, (whom may God preserve,) for the purpose of settling thereupon, there being suitable lands for cultivation, and such as is not will answer for pasture grounds for our herds and flocks, which we promise to occupy and settle as required by the royal ordinances. The boundaries of which are: on the east the Sandia Mountain, and on the west, the Puerco river; on the north, on both sides of the river, the boundary is the lands of Nicolas de Chaves, and those of the adjoining settlers of our Lady of the Conception, tract of Tome; and on the south, the place called Phelipe Romero, in a direct line until it intersects the boundaries above mentioned from east to west. Which your excellency being pleased to grant to us as requested, without injury to any third party having a better right, we will settle thereupon, as aforestated. In view of all which, we humbly pray

and request, your excellency to be pleased to provide and direct as we request, by doing which we will receive grace and favor; and we swear in due form that this our petition is not done in malice, but for the purpose of overcoming our difficulties.

(Signed by Diego Torres de Salazar and 32 others.)

Royal Grant.—In the town of Sante Fe, on the fifteenth day of November, one thousand seven hundred and forty, I the lieutenant colonel, governor and captain general of this kingdom of New Mexico, Don Domingo Gaspar de Mendoza, having seen the present petition made by the persons therein referred to, should order, and did order, that a grant be made to them of the tract they ask for, in the name of the King, our sovereign, (whom may God preserve,) in order that they may settle, cultivate, and improve the same for the benefit of themselves, their children, heirs, and successors who may have a better right thereto, without injury to any third party, as they promise in their said petition. Therefore, I order and direct the senior justice of the town of Albuquerque, Don Nicolas de Chaves, to give them the possession referred to, under the condition and terms required in such cases; and there being no doubt of the existence of other royal grants in the vicinity, the deeds and titles of those who adioin said land are required to be present for the fulfillment of this new grant, in order that it may be divided with more propriety, for the purpose of avoiding suits and difficulties at the present time as well as in the future, I deem it proper to conform to the forms which are provided. I have so provided, ordered and signed, with my attending witnesses, acting by appointment in the absence of a royal notary, there being none, and on common paper, there being none other in this kingdom.

DON GASPER DOMINGO DE MENDOZA.

ANTONIO DE HERRERA.
JOSE TERRUS.

It is noted in my book of government, on file in the archives of this capital, on the reverse of page 68.

MENDOZA.

Santa Fe, January 25, 1742.

At this place of our Lady of Belen, jurisdiction of the town of Albuquerque, on the ninth day of the month of December, of the year one thousand seven hundred and forty, I, Captain Don Nicolas Duran y Chaves, senior justice and war captain of said town and jurisdiction, by virtue of the decree of Lieutenant Colonel Don Gaspar Domingo de Mendoza, governor and captain general of this kingdom, promulgated on the fifteenth of November, last past, wherein I am directed to proceed to give royal possession to Captain Diego de Torres, as the representative of all the persons mentioned and signed in the foregoing petition; according to the tenor of their petition, a grant is made to them in the name of his Majesty, which decree was published to those adioining said lands by my order, and there being no objection made to the petition, I proceeded to give

possession. Said lands being bounded on the north by those of Captain Don Nicolas Duran y Chaves; on the south, fronting the foundation of the house of Phelipe Romero; on the west, the Puerco river; that portion on the opposite side of the river, with the boundary of the settlers of the pure and limpid conception, and on the east by the Sandia mountains, and on the south by the ruins and walls of the house of the aforesaid Phelipe Romero; and having examined said boundaries with three attending and instrumental witnesses, according to law, I took the aforesaid Torres by the hand and walked with him over the lands, and he cried in a loud voice, pulled up grass, threw stones, and gave other manifestations which are made and provided in such cases, receiving this possession in the name of his Majesty, quietly and peaceably, with the same boundaries contained in his petition; whereon I directed perpetual landmarks to be established, giving him said lands free and with general pastures, water, watering places, timber, uses and customs, in order that he, his children, heirs and successors, may enjoy the same without opposition, and this royal possession to be evidence of a sufficient title, and by virtue of which he shall enjoy the same as aforestated, and in order that it may so appear, I placed it on record. Bernabi Baca, Ballazar Baca, and those in my attendance being instrumental witnesses, who signed with me as acting judge, on the present common paper, there being none stamped in these parts. Before me, and as acting judge.

NICOLAS DE CHAVES.

Attending:

JOSE MIGUEL ALVAREZ DE CASTILLO.
GUILLERMO SAAVEDRA.

In the town of Santa Fe, one thousand seven hundred and forty-two, I, Lieutenant Colonel Don Gaspar Domingo de Mendoza, governor and captain general of this kingdom, by his Majesty, (whom may God preserve,) state that, having been informed that several residents included in this grant, which was made by me, said lieutenant colonel, in the name of the king, our sovereign, Captain Diego Torres, being their representative, I should and did order that all such persons who have not occupied such grant and tract, or who shall not occupy the same within the space of thirty days, to be counted from the day of the date hereof, shall be considered as having forfeited their right to the grant and lands to which they would have a right had they occupied the same, and that the holders of land- that are hereby forfeited, if they do not comply with what has been ordered, their lands shall be considered as vacant, or they shall be given to such persons as occupy them, in compliance with the royal decrees in reference to the settlement and cultivation of lands; and I have so provided, ordered, and signed with those in attendance, in the customary manner, and on the present paper, there being none other, to which I certify.

DON GASPAR DOMINGO DE MENDOZA.

Witnesses:

SALVADOR MANUEL.
ANTONIO GIOLE.

The above is a true, legal copy from the original on file in the archives at Santa Fe, in a government book for the year 1740 and upwards, on the reverse of page 68.

LUIS DIAZ Y LUJAN.

Belen, October 4, 1834.

TERRITORY OF NEW MEXICO,
County of Valencia:

I, J. A. Bazan, a justice of the peace within and for the County of Valencia, certify in due form that the foregoing document, purporting to be the grant of Belen, was found in the records of this office of the precinct of Belen, on this 12th day of January, A. D. 1857; and in testimony thereof, copies alike to the grant of Belen are, one at Manzana and the other at Sabinal.

In testimony whereof, I have hereunto affixed my hand and rubric, in my office, at the precinct of Belen, on said day, month and year.

J. A. BAZAN, (Rubric)
Justice of the Peace.

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT.
SANTE FE, NEW MEXICO, March 7, 1857.

The foregoing is a correct translation of the original on file in this office.

DAVID V. WHITING, *Translator.*

SURVEYOR GENERAL'S OFFICE,
SANTA FE, NEW MEXICO, September 27, 1857.

The foregoing is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

No. 3.

Notice.

UNITED STATES OF AMERICA,
Territory of New Mexico:

Joachim A. Bassan, Juan Cruz Baca, Antonio Jose Castillo, and Antonio Chaves, citizens of the United States, and residents of the County of Valencia, Territory of New Mexico, on behalf of themselves and the settlers and residents of the town of Belen, represent that the original settlers of said town, under whom your petitioners hold, became possessed of the said lands appertaining to said town by virtue of a grant made to Diego de Torres de Salazar, Pedro Vigil, and Miguel Salazar, and thirty-two other persons, as original settlers, by Gaspar Domingo de Mendoza, governor and captain general of the department of New Mexico, on the 15th day of —, A. D. 1740, which will more fully appear by reference to copy of documents, herewith filed. Said land, as appears by said deed of grant, is

bounded as follows: On the east, by the edge of the mountain of Sandia; on the west, by the river Puerco; on the north, on each side of the Rio del Norte, by the lands of Nicolas de Chaves and the lands of the settlers of Tome; and on the south, the place called — Romero, running in a straight line until it crosses the line from east to west.

Your petitioners further state that they cannot show the quantity of land claimed, except so far as the same is set forth in the well-known landmarks bounding said land, nor can they furnish a map or plot of survey of the same, as no survey has ever been made. Your petitioners state that they, and those under whom they hold, have been in peaceable possession *after* since the execution of said deed of grant, and the time they were put in possession, which will appear by said copies herewith filed; and that your petitioners know of no adverse claims to said lands. For confirmation of the grant, they refer your honor to the laws, usages, and customs of Spain and Mexico in force at the date of said grant.

M. ASHURST,
Pro Petitioners.

THE SURVEYOR GENERAL OF NEW MEXICO,
SURVEYOR GENERAL'S OFFICE,
SANTA FE, NEW MEXICO, September 27, 1857.

The foregoing is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor General."

"No. 5.

Decision.

Town of Belen.

SURVEYOR GENERAL'S OFFICE,
SANTA FE, NEW MEXICO, March 8, 1857.

This case was filed on the — day of —— and set for trial on the 8th day of March, 1857.

In the year 1740, Captain Diego de Torres and Antonio de Salazar, for themselves, and in the name of others, petitioned Gaspar Domingo de Mendoza, governor and captain general of New Mexico, for a grant to a tract of land, in what is now the county of Valencia, with the boundaries therein set forth.

On the 9th day of November, 1740, Gaspar Domingo de Mendoza, governor and captain general aforesaid, granted the land in conformity with the request of the petitioners, and directed Nicolas Duran y Chaves, senior justice and war captain of the town of Albuquerque and its jurisdiction, to place the parties in possession of the land petitioned for, in accordance with the provisions of the royal ordinances in such cases made and provided, which was accordingly done on the 9th December, 1740.

The documents acted upon by this office are copies of the originals deposited in the archives at Santa Fe, and duly certified by the proper officer.

The testimony taken in the case proves the town to have been in existence when the United States obtained possession of the territory, and the grant and proceedings had thereon, being in conformity with the laws, usages and customs of the government of Spain in force at that time, the grant to the aforesaid town of Belen is confirmed, and transmitted for the action of Congress in the premises.

WM. PELHAM,
Surveyor General.

SURVEYOR GENERAL'S OFFICE,
SANTA FE, NEW MEXICO, September 26, 1857.

The foregoing is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

* * * * * * *

FILED
SEP 25 1916
JAMES D. MAHER
CLERK

BRIEF OF PLAINTIFF IN ERROR

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 129

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, PLAINTIFF IN ERROR,

vs.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, DEFENDANT IN ERROR.

NEILL B. FIELD,
Counsel for Plaintiff in Error
Albuquerque, New Mexico.

(24,733)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

NO. 129.

THE BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, PLAINTIFF IN ERROR,

vs.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

This is an action of ejectment brought by plaintiff in error against defendant in error to recover a tract of land amounting to 11,005.98 acres, in the county of Socorro, state of New Mexico, being the area in conflict between the land grants (which hereafter will be designated as the La Joya grant and the Belen grant) as shown by the plats and approved surveys thereof.

These grants have a common boundary and it is conceded that the grant of the defendant in error is the older grant, that it was first surveyed, and that the patent issued to the defendant in error antedates that issued to the plaintiff in error. The history of the two grants, so far as necessary to a proper understanding of the questions presented by this record, is as follows:

The Belen grant was originally made by the King of Spain, through his proper agents, on the 15th day of November, 1740. It was filed in the office of the surveyor general of New Mexico early in the year 1857, and was recommended for confirmation by the said surveyor general on the 26th day of September, 1857. It was confirmed by Congress on the 22nd day of December, 1857 (11 Stat., 374), and a patent was issued by the government of the United States to the predecessors in title of the defendant in error on the 25th day of April, 1871.

The La Joya grant was made on the 29th day of May, 1819, and was presented to the surveyor general of the territory of

New Mexico but was never acted on by him. After the passage of the act creating the Court of Private Land Claims (6 Fed. Stat. An., 48) the predecessors in title of the plaintiff in error filed a petition in that court for the confirmation of the grant, and such proceedings were had thereon that on the 4th day of December, 1893, the said private land claim was by the judgment and decree of said court approved and confirmed, and a survey thereof ordered by the court, in accordance with the practice and procedure in such cases; and thereafter in pursuance of the said order, a survey of the said claim was made by a deputy United States mineral surveyor, and the plat and field notes of the survey were duly filed in the office of the surveyor general. Notice of the filing of these papers in the surveyor general's office was duly published, and within the ninety days allowed by law, Jacinto Sanchez and Alcario Sais, "in their own behalf and on behalf of the other confirmees, claimants and owners and possessors of the Belen claim," filed a protest in the office of the surveyor general and objected to the survey of the La Joya grant so filed in said office "insofar as the same affects and concerns the north boundary of the said Sevilleta land grant their protest they alleged that "the southern boundary said Belen claim No. 13, is a line drawn due east from the ruins of the house of Felipe Romero and the Cerro Turutu, a well-known and well-established landmark, as shown by the patent, plat and official survey of the said Belen claim No. 13, and that said south boundary line of the said Belen claim has been so known, so recognized and so established from and since the year A. D. 1740, and as such is well known by the confirmees and claimants of the said Sevilleta (La Joya) land grant, No. 55, and has been so known to all concerned and as a matter of notorious and common public knowledge from the year 1740 to the present time." They further alleged "that the survey, field notes and plat of the Sevilleta land claim No. 55 as made and returned to your office, so far as the same affects and concerns the northern boundary of the said claim, is unjust, improper and illegal, and that the United States deputy surveyor who made the survey failed and neglected to obtain and secure the necessary evidence and information with regard to where the true and just northern boundary line of said Sevilleta land grant No. 55 was and is located, which he ought to have done, and if allowed to stand, such survey will seriously and injuriously affect the just interests and well-established rights of the confirmees, owners, claimants and possessors of the Belen claim No. 13, to their great detriment and disadvantage, and will put them to much

inconvenience, trouble and expense to have this error and improper and unjust survey rectified, remedied and corrected." (Tr. f. 51.) They prayed "that the surveyor general may order a new survey of the said tract and grant described as the Sevilleta grant No. 55, with instructions to take testimony of witnesses as to the true and correct and legal boundary line on the north of the said Sevilleta land grant No. 55, for the reason that the present survey and plat are incorrect and unjust; that in the new survey there be incorporated and given to said claimants, confirmees, owners, etc., of the said Sevilleta grant No. 55 none of the lands contained within the boundary lines of the Belen claim No. 13, as shown on the plats and survey and patents thereof, and the said claimants and confirmees of the said Sevilleta land claim No. 55 be only given and awarded the lands they are justly entitled to under and by virtue of the decree of the Court of Private Land Claims and none of the lands within the boundaries of the Belen claim No. 13, as shown by the plat, survey and patent thereof, as on file in the office of the surveyor general and in possession of said confirmees, claimants, owners and possessors of said Belen claim No. 13." (Tr. f. 52.)

The United States filed no objections to this survey in the office of the surveyor general, but after the expiration of ninety days and on September 5, 1896, filed in the office of the clerk of the Court of Private Land Claims general objections to said survey and on September 13 of the same year, amended objections, specifying that the north, south and east boundaries of the grant were incorrectly surveyed. (Tr. f. 61.) The surveyor general reported this survey and the objections of the Belen grant people to the commissioner of the General Land Office, who thereafter transmitted the said survey and objections to the Court of Private Land Claims for determination as provided by the last paragraph of section 10 of the act creating that court.

The cause thus came before that court upon the objections of the Belen grant, transmitted from the surveyor general under section 10, and the objections of the government filed direct with the clerk of that court. The hearing upon these objections occurred in May, 1897, at which time the assistant United States attorney for the Court of Private Land Claims appeared on behalf of the government, and Col. Max Frost, a member of the bar of the Court of Private Land Claims, appeared on behalf of the Belen grant. The latter co-operated in the hearing throughout and introduced on behalf of his clients the field notes of the Belen grant and all its title papers. The witnesses presented in support of these objections were

largely persons interested in the Belen grant. (Tr. f. 61-62.)

The Court of Private Land Claims sustained the objections as to the north boundary and ordered a resurvey thereof, and the objections to the south and east boundaries were overruled. A resurvey pursuant to this decision of the court having been made, the United States on September 16, 1901, filed with the clerk of the Court of Private Land Claims and also in the surveyor general's office objections to the amended survey. No objections to the amended survey were filed on behalf of the Belen grant. On December 12, 1901, the objections to the amended survey were withdrawn and the amended survey was approved. (Tr. f. 63.)

The amended survey located the north boundary of the La Joya grant exactly as the same was claimed to be in the protest of the owners of the Belen grant. (Tr. f. 59.)

On the 8th day of February, 1907, a patent was issued by the United States to the predecessors in title of the plaintiff in error, in pursuance of the judgment of the Court of Private Land Claims. Counsel by stipulation have omitted from the printed transcript in this court the original grant papers, the surveys, plats and patents, but I suppose it is proper to state that the first survey of the grant according to the boundaries mentioned in the decree of confirmation, as made and returned into the office of the surveyor general, showed 304,631.36 acres of land embraced within the La Joya grant. The amended survey reduced the area of the La Joya grant to 272,193.88 acres, and the area in conflict between the two grants from 43,443.46 acres to 11,005.98 acres. In other words, 32,437.48 acres of land were removed from the operation of the decree of confirmation by the Court of Private Land Claims at the instance of these protestants and because of the filing of this protest.

In its pleadings the plaintiff in error set up the judgment of the Court of Private Land Claims as *res judicata* and also as creating an estoppel against the defendant in error to question the common boundary of these grants as located by that judgment, and all of the evidence offered was really directed to support that contention. The trial court, however, held that the judgment of the Court of Private Land Claims was not binding upon the defendant in error; that the court had no authority or jurisdiction to locate the common boundary between these two grants, and that the plaintiff in error had therefore failed to show any title to the ground in conflict.

The record as made up presents for the consideration of this court the following legal propositions:

1. Had the Court of Private Land Claims jurisdiction to

locate the boundaries of the La Joya grant and to cause the same to be surveyed in pursuance of its decree of confirmation?

2. Had that court jurisdiction to order the resurvey which was ordered at the instance and upon the protest of Jacinto Sanchez and Alcario Sais, claiming to represent the defendant in error and its predecessors in title?

3. What was the legal effect of this action by the Court of Private Land Claims?

4. Can the defendant in error take the benefit of that resurvey to the extent of more than 30,000 acres as to which that court found in its favor, and reject it as to the 11,000 acres as to which the court found in favor of the plaintiff in error?

5. Can the defendant in error in this case set up a different contention from that made in the Court of Private Land Claims upon which that court was induced to reduce the area of the plaintiff in error's claim by more than 30,000 acres?

For the purpose of the discussion of these propositions, I shall assume that it is conceded, as I understand it to have been conceded throughout, that both grants were perfect at the time of the cession, and that the United States government never had title to any of the lands within the boundaries of either grant. I shall attempt to show that if the defendant in error had seen fit to permit the approval of the original survey by the Court of Private Land Claims without objection on its part, such approval would have left open to investigation in the ordinary courts of competent jurisdiction the question of the true location of the boundary between the two grants, and that title to the entire area in conflict would have been open to litigation between the parties in such courts; that by reason of the action of the predecessors in title of the defendant in error the plaintiff in error was forever precluded from asserting title to 32,437.48 acres of land which were included in the original survey, and that the defendant in error was forever precluded from asserting title to the 11,005.98 acres which form the subject matter of this suit.

The plaintiff in error has filed in this court the following assignment of errors:

I.

The court erred in refusing to uphold the validity of the authority exercised by the Court of Private Land Claims under the provisions of section eight (8) of the Act of Congress creating said court, being an act entitled "An Act to establish a Court of Private Land Claims and to provide for the settlement of private land claims in certain states and

territories; approved March 3, 1891," and in holding, contrary to the contention of the plaintiff in error distinctly set up and made, that the owners of the Belen grant were not bound or affected by the final judgment of the said Court of Private Land Claims.

II.

The court erred in refusing to uphold the validity of the authority exercised by the Court of Private Land Claims under the provisions of section ten of said Act of Congress creating said court, being an act entitled "An Act to establish a Court of Private Land Claims and to provide for the settlement of private land claims in certain states and territories, approved March 3, 1891," and in holding contrary to the contention of the plaintiff in error distinctly set up and made that the owners of the Belen grant were not bound by the judgment and decision of the said Court of Private Land Claims locating the common boundary between the Sevilleta de la Joya grant and the Belen grant, notwithstanding such common boundary was so located at the instance of the owners of the Belen grant upon objections filed by persons representing the owners of the Belen grant, strictly in pursuance of the provisions of said section ten (10) of the said Act of Congress approved March 3, 1891.

III.

The court erred in holding, contrary to the contention of the plaintiff in error distinctly set up and made, that the Court of Private Land Claims created by the said Act of Congress had not power and jurisdiction to hear and determine by a proceeding essentially judicial in its nature, objections filed by the owners of the Belen grant to the survey of the Sevilleta de la Joya grant, and that the judgment of the said Court of Private Land Claims upon such hearing did not constitute an adjudication binding upon the owners of the said Belen grant.

IV.

The court erred in refusing to hold, in accordance with the contentions of the plaintiff in error distinctly set up and made, that the survey by officers of the United States and the patent issued in pursuance of such survey by the United States to the defendant in error, so far as it embraced any land lying south of the said common boundry line between the Sevilleta de la Joya grant and the Belen grant, is void in law and conveyed no title to the defendant in error.

V.

The court erred in refusing to hold, in accordance with the contention of the plaintiff in error distinctly set up and made, that the judgment of the Court of Private Land Claims, approving the resurvey of the Sevilleta de la Joya grant, was a valid exercise of authority, conferred upon the said Court of Private Land Claims by the said Act of Congress, approved March 3, 1891, and was binding upon the owners of the Belen grant by way of estoppel.

POINTS AND AUTHORITIES.

I.

THE COURT OF PRIVATE LAND CLAIMS HAD UNDOUBTED JURISDICTION OF THE ORIGINAL PETITION OF FELIPE PERALTA AND TOMAS CORDOBA FOR THE CONFIRMATION OF THE LA JOYA LAND GRANT.

This was an original proceeding under the provisions of Section 8 of the act creating the Court of Private Land Claims which is as follows:

> "That any person or corporation claiming lands in any of the states or territories mentioned in this act under a title derived from the Spanish or Mexican government that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases for a confirmation of such title; and on such application said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location and boundaries, in the same manner and with the same powers as in other cases in this act mentioned.
>
> If in any such case, a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States, and always subject to and not to affect any conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a release of all claim of title by the

United States; and no private right of any person as between himself and other claimants, or persons, in respect of any such lands, shall be in any manner affected thereby.

It shall be lawful for and the duty of the head of the Department of Justice, whenever in his opinion the public interest or the rights of any claimant shall require it, to cause the attorney of the United States in said court to file in said court a petition against the holder or possessor of any claim or land in any of the states or territories mentioned in this act who shall not have voluntarily come in under the provisions of this act, stating in substance that the title of such holder or possessor is open to question, or stating in substance that the boundaries of any such land, the claimant or possessor to or of which has not brought the matter into court, are open to question, and praying that the title to any such land, or the boundaries thereof, if the title be admitted, be settled and adjudicated; and thereupon the court shall, on such notice to such claimant or possessor as it shall deem reasonable, proceed to hear, try, and determine the questions stated in such petition or arising in the matter, and determine the matter according to law, justice and the provisions of this act, but subject to all lawful rights adverse to such claimant or possessor, as between such claimant and possessor and any other claimant or possessor and subject in this respect to all the provisions of this section applicable thereto."

6 *Fed. Stat. An.* 54.

This section conferred upon the Court of Private Land Claims jurisdiction to inquire into the validity of perfect titles, and to determine the same, as well as the rights of the claimants thereto and their extent, location and boundaries, either at the instance of the claimant or the United States.

The petition for the confirmation of the grant alleged:

"5th. The plaintiffs and their co-owners are the legal representatives of the original grantees of said land and claim a perfect title to the same. This claim was complete and perfect at the date when the United States acquired sovereignty over said Territory of New Mexico, and the land has been in peaceable and undisputed possession of the original grantees, their heirs, assigns and legal representatives from the date of the making of the grant to the present time.

6th. There are no known adverse claimants to the said tract of land nor any conflict to the title of plaintiffs

and their co-owners to said land, and plaintiffs pray that if any adverse claimant be discovered hereafter that the name of the same be inserted and made parties hereto. There are several large, permanent settlements on the land claimed and a large number of residents and inhabitants upon said land, all of which residents and inhabitants hold possession of their respective portions of said land with the knowledge and consent of the heirs, assigns and legal representatives of the original grantees." (Tr. folio 45.)

Thus the attention of the court was called by the petitioners to the fact that there was a large number of settlers within the exterior boundaries of the grant, but their belief that they did not claim adversely to the title represented by the petitioners. The United States answered the petition and appeared by its attorney and official representative and the court found in the eleventh paragraph of the decree of confirmation, "that the said grant has not heretofore been confirmed in whole or in part by the Congress of the United States or otherwise decided upon by any lawful authority of the United States." (Tr. f. 106.) It must, therefore, be conceded that in the original decree of confirmation the court found every fact necessary to establish its jurisdiction to grant the relief prayed by the petitioners.

> " 'Jurisdiction of the subject-matter is the power to deal with the general abtract question, to hear the particular facts in any case relating to this question, and to determine whether or not they are sufficient to invoke the exercise of that power. It is not confined to cases in which the particular facts constitute a good cause of action, but it includes every issue within the scope of the general power vested in the court, by the law of its organization, to deal with the abstract question.'
>
> The jurisdiction of a court depends upon its right to decide a case and never upon the merits of its decision. The distinction between want of jurisdiction and error is clear."
>
> *Brougham v. Oceanic Steam Nav. Co.*, 205 *Fed.* 857, 859-60.

It follows, therefore, that in determining the validity of the La Joya grant, the Court of Private Land Claims was acting within the letter of the authority granted by Section 8 when it found that the grant was a perfect grant at the time of the cession.

"The finding of the Court of Private Land Claims,

that this was a perfect grant, was in legal effect, a finding that at the date of the treaty of Guadalupe Hidalgo, the owners of this grant held it by a perfect and complete title since all confirmations are, by the land court act, made referable to the date of cession. What was the legal status of property held under a Spanish or Mexican title, which was perfect at the date of the treaty? Was it in any sense inferior to the tenure under a perfect American title at the same date? As to this, the decisions of courts of the highest authority are to the effect that it was not."

Ter. v. Delinquent Taxpayers, 12 *N. M.* 62, 65.

It was essential to the determination that the grant was a valid grant, that the court should determine its location and boundaries.

By the sixth article of the Gadsen treaty it was provided:

"No grants of land within the territory ceded by the first article of this treaty bearing date subsequent to the day 25th of September, when the minister and subscriber to this treaty on the part of the United States proposed to the Government of Mexico to terminate the question of boundary, will be considered valid or recognized by the United States, nor will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico."

Under this provision of the treaty, this Court has held that the jurisdiction of the Court of Private Land Claims to confirm a grant depended upon such location.

Ainsa v. United States, 161 *U. S.* 208.

Ely's Administrator v. United States, 171 *U. S.* 220.

Arivaca Land Co. v. United States, 184 *U. S.* 649.

The location of the boundaries of the La Joya grant having been, therefore, by the letter of the act creating the court, committed to the Court of Private Land Claims, it follows that the original decree of that court fixing the boundary as the ruins of the house of Feline Romero (Tr. f. 104) amounted to a judicial determination as between the petitioners and the United States that such was a true boundary.

United States v. Coe, 155 *U. S.* 76.

It is not contended that anything done by or under the authority of the government of the United States with reference to the La Joya grant unto the time of the filing of the plat in the surveyor general's office, affected the defendant or its predecessors in title, but I only seek to show under this head of this brief that everything that was done, was so done in

pursuance of authority directly conferred upon the Court of Private Land Claims. Under another head of this brief I shall seek to show that the defendant and its predecessors in title had an election to stay out of that court and litigate in the ordinary courts the question of title to the ground in conflict between the two surveys, or to go into the land court and by objections to the survey made in pursuance of the decree of confirmation, procure that tribunal to locate the boundary and thus foreclose litigation in the ordinary courts, but could not, having invoked the jurisdiction of the Court of Private Land Claims and by the action of that tribunal eliminated the claim of the plaintiff to more than 30,000 acres of land which was in conflict, reserve to itself the right to litigate in the ordinary courts as to the remaining 11,000 acres.

II.

THAT COURT ALSO HAD JURISDICTION TO HEAR AND ADJUDICATE THE OBJECTIONS FILED AND TO ORDER THE RESURVEY.

The procedure in the Court of Private Land Claims subsequent to the decree of confirmation followed strictly the provisions of Section 10 of the land court act. A survey in accordance with the decree of confirmation was made and returned to the surveyor general, who caused a plat to be made, and gave notice required by that section. The only objections to the survey filed with the surveyor general were those filed by the two claimants of the Belen grant, who purported to object on behalf of themselves and "of the other confirmees, claimants, owners and possessors of the Belen Claim and Land Grant No. 13." They were "parties claiming an interest in the tract embraced in the survey;" their objections were reduced to writing; stated distinctly their interest and the ground of their objection, and were signed by them and their attorney, and filed with the surveyor general. These papers were all transmitted to the Commissioner of the General Land Office and were by him transmitted to the court and were made the basis of the investigation by that court which resulted in the reduction of the area of the claim by more than 30,000 acres, and in establishing the north boundary at exactly the point claimed by the objectors to be the true location of that boundary. They said in their objections "that the north boundary and the north line of the said Sevilleta (La Joya) grant, as surveyed and platted, according to the field notes and plats in the case, and now on file in the said surveyor general's office, overruns and

projects within the boundary and boundary lines on the south of the said Belen Claim No. 13, to the amount of a strip, tract and parcel of land, about twenty miles from the east to the west and about two miles from the north to the south," (Tr. f. 49); "that the United States deputy surveyor who made the survey failed and neglected to obtain and secure the necessary evidence and information with regard to where the true and just northern boundary line of the said Sevilleta Grant, No. 55, was and is located, which he ought to have done, and if allowed to stand said survey will seriously and injuriously affect the just interests and well established rights of the confirmees, owners, claimants and possessors of the Belen Claim, No. 13, to their great detriment and disadvantage, and will put them to much inconvenience, trouble and expense to have this error and improper and unjust survey rectified, remedied and corrected." (Tr. f. 51.)

It will be observed that they did not allege that the two grants overlapped or that the owners of the Belen grant, because of the priority of their grant, were entitled to the ground in conflict. They did not allege that the patent and the survey of the United States to the owners of the Belen grant embraced lands not covered by their grant, and for that reason the Court of Private Land Claims had no jurisdiction to re-examine the extent of their grant. They raised by their objections no other issue than this: That by their original grant papers and patent and the act of Congress, the southern boundary line of the Belen Claim, No. 13, is a line drawn due east and west through the ruins of the house of Felipe Romero and over the Cerro Turutu, a well-known and well-established land mark (Tr. f. 50), and that the northern boundary of the La Joya grant was that identical line. There was never a suggestion that a prior sovereignty had granted the same lands to different persons and that they, as owners of the older grant, had a superior right to the overlap.

It is true they asked "that the surveyor general may order a new survey of the said tract * * * with instructions to take the testimony of witnesses as to the true and correct and legal boundary line on the north of the said Sevilleta land grant." (Tr. f. 52.) But they also asked that "the said claimants and confirmees of the Sevilleta Land Claim, No. 55, be only given and awarded the lands they are justly entitled to under and by virtue of the decree of the Court of Private Land Claims in the case and under the law establishing the Court of Private Land Claims." (Ibid.) They did not question the correctness of the decree of the Court of Private Land Claims which established the north boundary of the La Joya

grant to be "on the north the boundary of Sabinal, being a portion of the grant to Belen and more particularly designated by the ruins of the house of Felipe Romero and the point of the Sabinal hill lying due east and west of each other." (Tr. f. 104.)

After the evidence upon this issue had been taken, the associate justice who delivered the opinion of the court said:

> "In the matter of the survey in this case, the order will be entered setting aside the survey as to the north boundary line (not setting aside the decree of confirmation as to the north boundary), and a line will be drawn from the north boundary line as run immediately north to the Sabinal hill and run south a mile, 38 chains and 87 links south of the north boundary as surveyed, I believe, to the point of Sabinal hill that is testified to by nearly all the witnesses in the case, and from that point the line will be projected east and west to the intersection of the east and west line as surveyed." (Tr. f. 62.)

The judgment in pursuance of this oral announcement was:

> "That the said objection to the said north boundary is well founded and that the said survey of the said north boundary was and is erroneous. It is therefore ordered by the court that said grant as to said north boundary shall be, and the same is hereby ordered, resurveyed and that the north boundary shall be an east and west line running through the old monument situated about a mile south of the house of Jesus Baca in the settlement of Picacho del Sabinal, opposite and east of the point of the loma of the Sabinal and on the Socorro and Albuquerque road, said monument being the one recognized as the boundary between Belen and this grant, said line through said monument to be extended due east and west until it intersects the east and west boundaries of said grant as surveyed." (Tr. f. 57.)

The case presented for action by the Court of Private Land Claims, therefore, was not one of overlapping grants: was not one in which it was claimed that the land confirmed to the petitioners had been previously disposed of by the United States, but was one in which the jurisdiction of that court was invoked by the owners of the Belen grant to locate the common boundary line between the two grants, and to confine the decree of confirmation to that common boundary line.

By submitting their claim to that court the owners of the La Joya grant became liable to lose a part of the area of their

grant, although it was a perfect grant, if it appeared that any part of the land embraced in their grant had been disposed of by the United States.

Richardson v. Ainsa, 218 *U. S.* 289.

If, on the other hand, the United States had brought them into that court for the purpose of having their title investigated, their grant could not have been so limited.

> "The proceeding by the government was a matter over which he had no control and ought not to affect his rights."
>
> *Ibid.*

Without submitting their claims to the Court of Private Land Claims, they might have litigated in the ordinary courts with the owners of the Belen grant the question of this disputed boundary.

Richardson v. Ainsa, supra.

> "Even grants which were complete at the time of the cession may be required by Congress to have their genuineness and their extent established by proceedings in a particular manner before they can be held to be valid. But where no such proceedings are expressly required by Congress, the recognition of grants of this class in the treaty itself is sufficient to give them full effect.
>
> • • • • • • • • • • • •
>
> A grant of land in New Mexico, which was complete and perfect before the cession of New Mexico to the United States, is in the same position as was a like grant in Louisiana or in Florida, and is not in the position of one under the peculiar acts of Congress in relation to California; and may be asserted, as against any adverse private claimant, in the ordinary courts of justice."
>
> *Ainsa v. New Mexico & Arizona R. R.,* 175 *U. S.* 76, 79-80, 90.

I do not understand either of these propositions to be disputed by the learned counsel for the Belen grant, but I understand their position to be that the owners of the Belen grant might inject themselves into this proceeding in the land court, raise an issue with the owners of the La Joya grant as to the location of their boundary and the correctness of their survey, accept any benefits which might accrue to them by reason of the action of that court thus induced by them, and yet repudiate in this action the burden of that decision upon the ground that that court was without jurisdiction to do the very thing which they asked that court to do and which that court did. I further understand that this position is sustained by the ruling of the court below.

The Court of Private Land Claims, although a court of limited jurisdiction, was invested with the exercise of judicial powers.

United States v. Coe, 155 *U. S.* 76.

It is obvious that the owners of the Belen grant invoked the exercise of judicial power when they asked that court to correct the alleged error in the location of the boundary by the survey. The survey was a ministerial act to be carried forward in execution of the decree of confirmation, and the correction of the alleged error in the survey foreclosed inquiry in any other tribunal as to the right of the owners of the La Joya grant to the lands lying north of the line as finally established. The ruling of the court below establishes the rather startling result that the owners of the Belen grant could take the benefit of that judicial action in so far as it was advantageous, but could repudiate its burden. This I believe to be contrary to fundamental principles.

Davis v. Wakelee, 156 *U. S.* 680, 691-2.

Iron Gate Bank v. Brady, 184 *U. S.* 665, 667-8.

Forsyth v. Hammond, 166 *U. S.* 506, 516-8.

"The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined, must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenace of social order; for, the aid of the judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them."

Southern Pac. R. R. v. United States, 168 *U. S.* 1, 48-9.

While there are many cases which hold that the Court of Private Land Claims has no jurisdiction except such as it derived from the Act of Congress (Las Animas Land Grant Co. v. United States, 179 U. S. 201; Cessna v. United States, 169 U. S. 165), these cases do not, when properly understood,

deny the jurisdiction of the court in any proper case to determine any question of law or fact properly arising in the exercise of its jurisdiction, and the provision of the statute that "no proceeding, decree or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be reserved and saved to the same effect as if this act had not been passed; but the proceedings, decrees and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such lands," (Sub-Sec. 5, Sec. 13, 6 Fed. Stat. An. 58), must be read and construed in the light of all of the other provisions of the act, bearing in mind that all of the powers conferred upon the Court of Private Land Claims are incident to the exercise of that jurisdiction.

> "We do not wish to be understood as holding that two claimants to the same lands may not litigate, as between themselves, which of the two is entitled to a confirmation, and the question thus becomes *res adjudicata;* * * *
>
> The main object of the Court of Private Land Claims is to ascertain and determine whether the land claimed as private property under the treaty is in fact private property, or, on the contrary, is public property. In the latter case, of course, a confirmation is refused; in the former case a confirmation is made if the claimant appears to have, as between himself and the United States, the right to it, but subject to the rights of others who are at liberty to assert their superior title in the local courts."
>
> *United States v. Conway,* 175 *U. S.* 60, 70-71.

The case of the United States v. Green, 185 U. S. 256, contains an instructive discussion as to the nature of the jurisdiction exercised by the Court of Private Land Claims. There, on the application of the United States, the petitioning claimants were required to bring in a new party as defendant upon the ground that he asserted title to the land in question under a grant. One Colin Cameron, who was a defendant to the original petition, and one Christie, who was made defendant on motion of the United States, each answered separately and set up title to the land mentioned in the petition adverse to the petitioner's. The court in that case quoted and commented upon Section 7 of the act as follows:

> "By section seven, 'all proceedings subsequent to the filing of the petition' are required to 'be conducted as near as may be according to the practice of the courts of equity of the United States;' and, in addition, it is provided as follows:

'The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title, and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the republic of Mexico, at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord eighteen hundred and forty-eight, or the treaty concluded between the same powers at the City of Mexico on the thirtieth day of December, in the year of our Lord eighteen hundred and fifty-three, and the laws and ordinances of the government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and the United States, which decree shall in all cases refer to the treaty, law or ordinance under which such claim is confirmed or rejected.'

The fact also that, by section 8, the United States may, without limitation as to time, voluntarily institute a proceeding for the determination of the validity or invalidity of any claim or title deemed by it 'open to question,' affords further support for the construction that Congress intended that in a proceeding brought in due time to settle the validity of an alleged Spanish or Mexican grant, the United States might, at any stage of such pending litigation, apply to the Court of Private Land Claims—as was done by the United States with respect to the defendant Christie—to have brought into the case adverse claimants who had not been made parties defendant by the petitioner, in order that such parties might be afforded an opportunity to be heard, and the Court of Private Land Claims be aided in reaching a just decision. As further establishing the fact that it was not the purpose of Congress to deprive the Court of Private Land Claims of power to adjudicate upon claims asserted by defendants during the pendency of a lawful proceeding to obtain an adjudication respecting the validity of an alleged Mexican grant, even though such defendants were made parties or filed claims for affirmative relief after the period limited for the institution of an original proceeding to obtain confirmation of a claim of title, we

excerpt the following proviso to the portion of section 12 heretofore quoted:

'*Provided,* That in any case where it shall come to the knowledge of the court that minors, married women or persons non compos mentis are interested in any land claim or matter brought before the court, it shall be its duty to appoint a guardian *ad litem* for such persons under disability, and require a petition to be filed in their behalf, as in other cases, and if necessary to appoint counsel for the protection of their rights."

United States v. Green, 185 *U. S.* 256, 265-7.

If it be contended that any issue other than that stated by me was raised by the objections to the survey, I submit that such issues were, by the action of the land court, necessarily decided against the contention of the owners of the Belen grant, and that not having appealed from that decision, they are bound by it.

United States v. Baca, 184 *U. S.* 653.

Puget Sound Elec. Ry. v. Lee, 207 *Fed.* 860.

III.

THE COURT OF PRIVATE LAND CLAIMS ASCERTAINED AS A FACT, BY A PROCEEDING ESSENTIALLY JUDICIAL IN ITS NATURE, THE COMMON BOUNDARY BETWEEN THESE GRANTS.

The objections on behalf of the Belen grant to the original survey of the La Joya grant, in substance, were that the two grants had a common boundary; that that boundary "has been so known, so recognized and so established from and since the year A. D. 1740, and as such is well known by the confirmees and claimants of the said Sevilleta (La Joya) Land Grant No. 55, and has been so known to all concerned and as a matter of notorious and common public knowledge from the year 1740 to the present time." (Tr. f. 51.) The land court found as a fact upon the testimony of witnesses, that this allegation was true and directed a resurvey in accordance therewith. This resurvey was made and the line as claimed by the objectors was established. It is difficult to understand the theory on which it is contended that the parties to that investigation are not bound by the result. Under the authorities cited and quoted that fact thus established is forever set at rest as between these parties and their privies, and they were bound in the court below by the legal consequences of that finding, whatever those consequences may be. I do not contend that the Court of Private Land Claims had power to annul the patent which had been issued by the United

States to the owners of the Belen grant, but I do contend that it had the power to ascertain the fact upon which the law, in this subsequent proceeding, declared that result. The fact being established that the Belen patent embraced lands not within the grant as confirmed by Congress, the judgment of the law upon that fact is that the survey and the patent are, and each of them is, void as to the excess. Congress confirmed the grant "of the town of Belen in the County of Valencia, reported for the favorable action of Congress by the said surveyor general on the 30th of September, 1857," and directed that "the Commissioner of the Land Office shall issue the necessary instructions for the survey of (all of) said claim (s) as recommended for confirmation by the said surveyor general, and shall cause a patent to issue therefor as in ordinary cases of private individuals: *Provided,* That this confirmation shall only be construed as a relinquishment of all title and claim by the United States to any of said lands, and shall not affect any adverse valid rights should such exist."

The grant as recommended for confirmation had for its southern boundary "the place called Phelipe Romero in a direct line until it intersects the boundaries above mentioned from east to west." The finding of the Court of Private Land Claims as to the location of this boundary was in effect that the Belen survey and patent embraced 11,005.98 acres of land which lay to the south of the boundary line which Congress confirmed, and this was a finding made at the instance of the owners of the Belen grant and resulted to their manifest advantage by removing from the field of controversy their title to more than 30,000 acres of land which lay to the north of that line and which had been embraced in the first survey of the La Joya grant.

It seems that the fundamental error of the courts below was based upon their failure to appreciate a well-defined distinction between the power of the Court of Private Land Claims to determine conclusively matters of fact, and the power of that court to pronounce the judgment of the law upon those facts when determined, but this distinction is clear.

The Court of Private Land Claims, therefore, properly determined the location of the disputed boundary and approved the survey and plat which fixed that boundary. The owners of the Belen grant now seek collaterally to question the effect of that decision.

The decision by the Court of Private Land Claims upon any issue of fact which it had jurisdiction to investigate is as conclusive as between all of the parties before the court as any

other decision of any other judicial tribunal of any matter clearly within its jurisdiction.

> "The rule is as applicable to inferior and special tribunals as it is to those of superior or general authority, that where they have once acquired jurisdiction their subsequent proceedings cannot be collaterally questioned for mere error or irregularity. The provision of the fifteenth section of the act of March 3d, 1851, declaring that the final decrees of the commissioners, or of the District Court, and patents following them, in these California land cases, shall be conclusive between the United States and the claimants only, and shall not affect the interests of third persons, does not change the operation of this general rule. Final decrees in other judicial proceedings affecting the title to property, are not conclusive except between the parties; they bind only them and their privies; they do not conclude the rights of persons not before the court, or in any manner affect their rights. Third parties, with respect to the adjudications of the Board of Commissioners, and of the District Court, on appeal from the board, stand upon the same footing as they do with respect to other adjudications in the ordinary proceedings of courts of law.
>
> The decree of the District Court upon the claim necessarily involved an adjudication that the grant under which it was made was valid; and the decree approving the survey settled the location and boundaries of the land. As neither of these determinations can be collaterally assailed for any matter which might have been corrected on appeal, had it been brought to the attention of the appellate court, the plaintiffs must recover unless the defendants have a superior title to the premises."
>
> *Lynch v. Bernal*, 9 *Wall.* 315, 322-3.

It was, therefore, the duty of the lower courts in the case at bar to pronounce the judgment of the law upon the facts established by the decision of the land court and to hold that the patent and survey of the Belen grant were absolutely void as to the land south of the true boundary of the grant as recommended for confirmation by the surveyor general.

> "The survey of the claim under the Flugge grant was, under the act in question, brought before the District Court and there subjected to judicial examination, and finally received the approval of the court. If the defendants or those under whom they hold failed to appear and contested the survey, they cannot now be heard in this action to question its correctness."

Henshaw v. Bissell, 18 *Wall.* 255, 268-9.

The owners of the Belen grant are estopped to question the location of this boundary line or to claim any land to the south of that line as established.

Whether the Court of Private Land Claims was acting as a special tribunal with its jurisdiction defined by the act of its creation, or as a mere agency of the political department of the government, with powers analagous to those exercised by the Secretary of the Interior before that court was created, when it heard and determined the protest of Sanchez and Sais, it acted in strict accordance with the letter of the authority granted to it by Congress. If, as the State Supreme Court apparently concedes, its erroneous action in locating the common boundary between the two grants would cast a cloud upon the title of the Belen grant, the correction of that error removed the cloud, and, therefore, the claimants of the Belen grant, having accepted the benefit of that action to the extent of more than thirty thousand acres, should not be permitted to reject the burden as to the remaining eleven thousand acres. The conclusion of that court that as the owners of the Belen grant were not bound to protest against the first survey they were under no obligations to protest against the second is a *non sequiter*. While they had a right to stay out of the Court of Private Land Claims and to litigate in the ordinary tribunals, the question of the true location of the common boundary of these grants, they could not submit that question to the Court of Private Land Claims and accept its conclusion so far as it was favorable to their contention and reject it so far as it was unfavorable. The conclusion of that court was, however, in strict accordance with their contention.

> "It is enough for this case to hold that the powers of the Court of Private Land Claims are not narrow and restricted, and that, when it finds that there is a valid grant for a certain number of acres within the outboundaries of a larger tract, it may inquire, and, if it finds sufficient reasons for determining the true boundaries of the tract that was granted, it can so prescribe them and sustain the claim to that extent, referring to the land department the final and absolute surveys thereof."
>
> *Ely's Administrator v. United States*, 171 *U. S.* 220, 241.

"The doctrine of the Ely case, 171 U. S. 220, was not that it was within the power of the court to locate grants, but that if a location had been made, and there were facts enough to nail it to the ground, and determine its

true boundaries, that might be done."

Arivaca Land & Cattle Co. v. United States, 184 *U. S.,* 649, 653.

"It has been often said by this court that the land officers are a special tribunal of a *quasi* judicial character, and their decision on the facts before them is conclusive. And we are not now controverting the principle that where a contest between individuals, for the right to a patent for public lands, has been brought before these officers, and both parties have been represented and had a fair hearing, that those parties are concluded as to all the facts thus in issue by the decision of the officers."

United States v. Minor, 114 *U. S.,* 233, 243.

"The appropriate officers of the Land Department have been constituted a special tribunal to decide such questions, and their decisions are final to the same extent that those of other judicial or *quasi* judicial tribunals are."

Vance v. Burbank, 101 *U. S.,* 514, 519.

In the Conway case the surveyor general recommended the grant of four square leagues to each pueblo, measured from the church as a center, and Congress confirmed the grant to that amount and as recommended for confirmation by the surveyor general. It was not contended that the grant as surveyed and patented did not conform to the act of confirmation, but in that case the court said:

"We do not wish to be understood as holding that two claimants to the same land may not litigate, as between themselves, which of the two is entitled to a confirmation, and the question thus becomes *res adjudicata;* but when the title has once been confirmed by Congress it should be respected by the Court of Private Land Claims as if it were a confirmation by the court itself and conflicting claimants are at liberty to resort to the ordinary remedies at law or in equity, according to the nature of the claim."

United States v. Conway, 175 *U. S.,* 60, 70-71.

If, as is there said, two claimants for the same land may litigate, as between themselves, which of the two is entitled to a confirmation and the question thus becomes *res adjudicata,* why may not claimants of lands with a common boundary litigate, as between themselves, the question of the true location of that boundary and become bound by the result?

It is firmly established by the decisions of this Court that a patent issued by the land department of the United States

for lands not owned by the government, or not subject to the jurisdiction of the official issuing the patent, is void and open to question by the owner of the land in any appropriate proceeding.

From its opinion in this case, it is apparent that the state court treats the title to the Belen grant as grounded upon the survey and patent and not upon the act of confirmation. That the act of confirmation is the basis of the Belen grant title is fully established by all of the authorities.

"It is not to be understood that when the United States executes a document on the footing of an earlier grant by a former sovereign, it intends or purports to enlarge the grant."

Boquillas Cattle Co. v. Curtis, 213 *U. S.,* 339, 344.

"Counsel for the plaintiffs has argued that a patent from the United States is final and conclusive on everybody, and that the title which it confers cannot be disputed in a court of law.

"No doubt, where the patent is for land to which the government had an undisputed title, the proposition is generally, if not always true. But the United States, in dealing with parties claiming, under Mexican grants, lands within the territory ceded by the treaty of Mexico, never made pretence that it was the owner of them. When, therefore, guided by the action of the tribunals established to pass upon the validity of these alleged grants, the government issued a patent, it was in the nature of a quit-claim—an admission that the rightful ownership had never been in the United States, but had passed at the time of the cession to the claimant, or to those under whom he claimed. This principle has been more than once clearly announced in this court. The leading cases are Beard v. Federy, 3 Wall. 478; Henshaw v. Bissell, 18 id. 255; Miller v. Dale, 92 U. S. 473.

"Such a patent was, therefore, conclusive evidence only as between the United States and the grantee that the latter had established the validity of the grant."

Adam v. Norris, 103 *U. S.,* 591, 593.

"But in this case both parties stand upon patents; both have in these instruments the conveyance of the government, and a recognition of their respective concessions under the former government. In a controversy founded upon either patent as against imperfect or equitable claims or interests obtained since the acquisition of the country, the same language might be repeated which is used in the cases cited. But in the present controversy

between parties claiming under two patents, each of which reserves the rights of other parties, the inquiry must extend to the character of the original concessions. The controversy can only be settled by determining which of these two gave the better right to the demanded premises."

Henshaw v. Bissell, 18 *Wall.* 255, 266.

"There is no question as to the principle that where the officers of the government have issued a patent in due form of law, which on its face is sufficient to convey the title to the land described in it, such patent is to be treated as valid in actions at law, as distinguished from suits in equity, subject, however, at all times to the inquiry whether such officers had the lawful authority to make a conveyance of the title. But if those officers acted without authority; if the land which they purported to convey had never been within their control, or had been withdrawn from that control at the time they undertook to exercise such authority, then their act was void—void for want of power in them to act on the subject matter of the patent, not merely voidable; in which latter case, if the circumstances justified such a decree, a direct proceeding, with proper averments and evidence, would be required to establish that it was voidable, and should therefore be avoided. The distinction is a manifest one, although the circumstances that enter into it are not always easily defined. It is, nevertheless, a clear distinction, established by law, and it has been often asserted in this court, that even a patent from the government of the United States, issued with all the forms of law, may be shown to be void by extrinsic evidence, if it be such evidence as by its nature is capable of showing a want of authority for its issue."

Doolan v. Carr, 125 *U. S.,* 618, 624-625.

In the light of these authorities it is obvious that the Supreme Court of New Mexico misinterprets the decree of the Court of Private Land Claims when it says:

"The decree of confirmation of the Sevilleta Land Grant by the Court of Private Land Claims shows that that portion of the Belen grant now in dispute in this action was taken from the Belen grant as *confirmed by act of Congress* and included within the boundaries of the Sevilleta grant." (Tr. f. 129.)

The Court of Private Land Claims merely found as a fact that the southern boundary of the Belen grant was not correctly established by the surveyor general and that such south-

ern boundary was located where by the protest of Jacinto Sanches and Alcario Sais it was alleged to be. Therefore the survey and patent to the Belen grant did not amount even to a quit claim by the United States as to any land which was south of the ruins of the house of Felipe Romero, and to hold otherwise is to hold that the survey and patent enlarged the grant which was confirmed by the act of Congress, for it must be borne in mind that both the survey and patent were subsequent to the act of confirmation.

The act of confirmation by Congress and the judgment of the Court of Private Land Claims are of equal dignity. Neither gives title to the land, but each establishes the validity of the grant; in each case a survey was required to identify the land, and in each case the surveyor general was the official designated by law to make the survey. In the case of the Belen grant he acted under the supervision of the Secretary of the Interior; in the case of the La Joya grant under the supervision of the Court of Private Land Claims. His location of the southern boundary of the Belen grant was open to question by the claimants of the La Joya grant, in the ordinary courts, until and unless it was revised and corrected or approved by some other tribunal authorized by law to re-examine his survey of the Belen grant. His action in the case of the La Joya grant was by the letter of the statute open to re-examination and correction by the Court of Private Land Claims at the instance of "any party claiming an interest in the confirmation or by any party claiming an interest in the tract embraced in the survey or any part thereof." That his action in locating the southern boundary of the Belen grant was not binding on the claimants of that grant is conclusively established by the decision of this Court in the case of Stoneroad v. Stoneroad, where, in an opinion delivered May 20th, 1895, it held a survey of the Preston Beck grant, which had been confirmed by Congress, approved and surveyed in 1860 and patented on June 13th, 1883, still open to re-examination by the Secretary of the Interior at the instance of the grant claimant, saying:

> "The phrase, 'under the direction of the Secretary of the Interior,' as used in these sections of the statutes, is not meaningless, but was intended as an expression in general terms of the power of the Secretary to supervise and control the extensive operations of the land department of which he is the head. It means that, in the important matters relating to the sale and disposition of the public domain, the surveying of private land claims, and the issuing of patents thereon, and the administra-

tion of the trusts devolving upon the government, by reason of the laws of Congress or under treaty stipulations, respecting the public domain, the Secretary of the Interior is the supervising agent of the government to do justice to all claimants and preserve the rights of the people of the United States. As was said by the Secretary of the Interior on the application for the recall and cancellation of the patent in this pueblo case (5 Land Dec. 494): 'The statutes in placing the whole business of the department under the supervision of the Secretary, invest him with authority to review, reverse, amend, annul, or affirm all proceedings in the department having for their ultimate object to secure the alienation of any portion of the public lands, or the adjustment of private claims to lands, with a just regard to the rights of the public and of private parties. Such supervision may be exercised by direct orders or by review on appeals. The mode in which the supervision shall be exercised in the absence of statutory direction may be prescribed by such rules and regulations as the Secretary may adopt.'

* * * * * * * * * *

"Nothing in the record indicates that the defendant in error has availed himself of the legal privilege of appeal to the Secretary of the Interior, and of course his right to do so is not concluded by any expression of opinion which we have made."

Stoneroad v. Stoneroad, 158 *U. S.*, 240, 249-253.

This Court in the case of Russell v. Maxwell Land Grant Company, said:

"It may be said that the defendants have the same right to rely upon the regular surveys, that the plaintiff has upon the survey of this special land grant. This is undoubtedly true, but *the survey is one thing and the title another.* If sectional lines had been run through the entire limits of the Maxwell grant, it would not thereby have defeated the grant or avoided the effect of the confirmatory act. *A survey does not create title; it only defines boundaries.* Conceding the accuracy of a survey is not an admission of title. So the boundaries of the tract claimed by defendants may not be open to dispute, but their title depends on the question whether the United States owned the land when their ancestor filed his homestead claim thereon. If at that time the government had no title, it could convey none."

(Italics mine.)

Russell v. Maxwell Land Grant Co., 158 *U. S.* 253,

258-259.

The Perea grant and the Preston Beck grant were both reported for confirmation by the surveyor general of New Mexico and confirmed by the same act of Congress. They overlapped to the extent of several thousand acres and the question of title to the ground in conflict was finally settled by this Court in the case of Jones vs. St. Louis Cattle Company, in which this Court said:

"The act of Congress was not a gratuity, it was intended to be a discharge of the obligations of the treaty between the United States and Mexico. *It was a confirmation of rights which existed, and as they existed.*

The reports of the surveyor general were made under the authority of the Act of Congress of July 22, 1854,c. 103, sec. 8, 10 Stat. 308, 309, which made it the duty of that officer 'to ascertain the origin, nature, character and extent of all claims to lands under the laws, usages and customs of Spain and Mexico.' He was required to make report thereof 'denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages and customs of the country before its cession to the United State, * * * which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bona fide* grants, and give full effect to the treaty of eighteen hundred and forty-eight between the United States and Mexico.'

The proceedings, therefore, for the confirmation of titles derived from Mexico commenced with the surveyor general and were consummated by the confirming act, the surveyor general deciding in the first instance. The petition to him 'is the commencement of proceedings, which necessarily involve the validity of the grant from the Mexican goverment.' Congress, however, constituted itself the tribunal of ultimate decision of the validity or invalidity of the claim, as, of course, it might do in the discharge of the treaty obligations, or delegate that duty to the judicial department. Tameling v. United States Freehold Co., 93 U. S. 644; Astiazaran v. Santa Rita Mining Co., 148 U. S. 80, 82, 84; Stoneroad v. Stoneroad, 158 U. S. 240, 248.

The confirmation, therefore, cannot be dissociated from what preceded it, and it may be said of such direct confirmation by act of Congress, as has been said of confirmation through special tribunals created by Congress, that it constitutes a declaration of the validity of the

27

claim under the Mexican laws and that the claim is entitled to recognition and protection by the stipulations of the treaty. Beard v. Federy, 3 Wall. 478, 492. And if there be claims under two patents, each of which reserves the rights of the other parties, the inquiry must extend to the character of the original concession. The controversy can only be settled by determining which of these two gives the better right to the demanded premises. Henshaw v. Bissell, 18 Wall. 255, 266."

Jones v. St. Louis Land Co., 232 *U. S.* 355, 360-1.

IV.

JACINTO SANCHEZ AND ALCARIO SAIS REPRESENTED IN THE COURT OF PRIVATE LAND CLAIMS THE DEFENDANT IN ERROR AND ITS PREDECESSORS IN TITLE.

It is not believed that the trial court based its judgment upon any theory of want of privity between the defendant and those persons who filed the objections to the survey which were afterward passed upon by the Court of Private Land Claims; nor is it believed that any such contention will be made in this court. Indeed the Supreme Court of New Mexico in its opinion said:

"Appellant as a final proposition urges that Sanchez and Sais represented in the Court of Private Land Claims the defendant in this case, appellee here, and its predecessors in title.

"We do not understand that this contention of appellant was controverted by appellee, and deem it immaterial by reason of our conclusion upon the question of jurisdiction and our opinion that jurisdiction could not be conferred by consent." (Tr. f. 137.)

If authority be needed in this Court on this proposition, I submit:

First. Sanchez and Sais claimed to bring the objections on behalf of themselves and the "other confirmees, claimants, owners and possessors of the Belen Claim and Land Grant No. 13," and presented to the Court of Private Land Claims the paper titles under which the defendant now claims, thus bringing themselves clearly within the principle of class representation in litigation which permits a smaller number to appear and litigate on behalf of an unwieldy mass.

Smith v. Swormstedt, 16 *How.* 288 and note to same case 14 *L. Ed.* 942.

Bacon & Robins, Trustees, v. Robertson 18 *How.* 480 and note to same case, 15 *L. Ed.* 499.

Second. They were represented by an attorney at law, duly admitted to practice in the Court of Private Land Claims, who purported to represent the predecessors in title of the defendant and the persons named in the objections, and his authority to so represent them, in the absence of proof to the contrary, is conclusively presumed.

Canal Co. v. Swann, 5 *How.* 83.
Hill v. Mendenhall, 21 *Wall.* 453.
Ritchie v. McMullen, 159 *U. S.* 235.

The record shows that Mr. Frost was a member of the bar of the Court of Private Land Claims, duly admitted to practice therein, and that on the hearing in that court he offered in evidence "the field notes of the Belen grant, and all the title papers in this case, and also ask leave to send for the original patent; I will have it here by Monday morning." (Tr. f. 71.)

I respectfully submit that the judgments of the courts below should be reversed and the case remanded to the Supreme Court of the State of New Mexico with directions to grant the plaintiff in error a new trial.

NEILL B. FIELD,
Counsel for Plaintiff in Error.

INDEX.

Page.

STATEMENT OF CASE..... 1
STATEMENT OF FACTS..... 2–5
THE QUESTION STATED..... 5–6
ARGUMENT 7–18
The Court of Private Land Claims is a Court of Special and Limited Jurisdiction..... 7
Said Court of Private Land Claims had no jurisdiction of the original petition of Peralta and Cordoba for the confirmation of the Cevilleta Land Grant in so far as it conflicted with or affected the Belan Land Grant 7
Said Court of Private Land Claims had no jurisdiction to hear or adjudicate objections filed by Sanchez and Sais or any one else assuming to represent the Town of Belen, or to order the re-survey of any portion of the Belen Grant..... 10
The alleged acts of Sanchez and Sais do not constitute an estoppel as to this defendant..... 15
CONCLUSION 18

CASES CITED.

Act Mar. 3, 1891, VI Fed. St. An. 54, Sec. 8.....12–16
Aspern vs. Nixon, 11 L. Ed. 1059.....14–15
Balance vs. Forsyth, 62 U. S., 389..... 14
Cent. Dig., Vol. 13, Subject Courts, Secs. 75 and 76. 14
Coe vs. U. S., 155 U. S., 76, 39 L. Ed. 79..... 12
Dunham vs. Hatcher, 31 Ala., 483..... 14
Ensinger vs. Powers, 108 U. S., 292, 27 L. Ed. 732.. 14
Fleishman vs. Walker, 91 Ill., 318.....13–14
Gardner vs. Mich. Central Rd. Co., 150 U. S., 349, 37 L. Ed. 1107..... 15
Haldeman vs. U. S., 584, 23 L. Ed. 423..... 15
Hoover vs. Hanna Blacks, 48; see also 11 Cyc., page 673, and note..... 14
Isaac Fleischman vs. Samuel J. Walker, *et al.*, 91 Ill., 318 13–14

Page.

Last Chance Mining Co. vs. Tyler Mining Co., 157 U. S., 683, 39 L. Ed., 859 15
Lyon vs. Perin, etc., Mfg. Co., 125 U. S., 698, 31 L. Ed., 839 15
Las Animas Land Grant Co. vs. U. S., 179 U. S., 201, 45 L. Ed., 155 10
Okla. City vs. McMaster, 196 U. S., 529, L. Ed. 587 15
Reed vs. Proprietors Locks & Canals, 12 L. Ed., 1077 15
Smith vs. Swormstedt, 16 How., 289 17
State vs. Tolleston Club of Chicago, 53 Fed., 18 14
The City of Waverly vs. The Auditor of Public Accounts, *et al.*, 100 Ill., 354 13
The Town of Virden, *et al.*, vs. Thomas B. Needles, *et al.*, 98 Ill., 366 13
Town of Real de Dolores Del Oro, *et al.*, vs. U. S., *et al.*, 175 U. S., 71, 44 L. Ed., 76; 6 Fed. Stat. An. 58 10
United States vs. Baca, 184 U. S., 659, 46 L. Ed. 736 9–10
United States vs. Conway, 175 U. S., 71; 44 L. Ed. 76 10
United States vs. Conway, 175 U. S., 60; 44 L. Ed. 72 10
United States vs. Conway, 175 U. S., 175; 44 L. Ed. 72 12
Washington, Alexandria & Georgetown Steam Packet Co. vs. Frederick E. Sickles, *et al.*, 24 How., 333, 16 L. Ed., 651 14
Washington S. Packing Co. vs. Sickles, 16 L. Ed., 650 and 770 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 129.

THE BOARD OF TRUSTEES OF THE CEVILLETA DE LA JOYA GRANT FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, *Plaintiff in Error,*

vs.

THE BOARD OF TRUSTEES OF THE BELEN LAND GRANT, *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW MEXICO.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

This is an action of rejectment brought by Plaintiff in Error against Defendant in Error in the District Court of

Socorro County, New Mexico, to recover a tract of land amounting to 11,005.98 acres in said county, being area in conflict between the Cevilleta de la Joya and the Belen Private Land Claims.

The judgment of the District Court in favor of defendants was affirmed by the Supreme Court of the State.

Statement of Facts.

It appears that the Belen claim, or land grant, was made by the crown of Spain on the 9th day of December, 1740, and was reported favorably by the United States Surveyor General of New Mexico for confirmation on the 30th day of September, 1857, and confirmed by Act of Congress on the 22nd day of December, 1858, and surveyed by the United States for 194,663 acres, and a patent for such amount of land was made to the Town of Belen by the United States Government on the 25th day of April, 1871. (Tr., 52.)

It also appears that on the 29th day of May, 1819, the crown of Spain made a grant of land to the residents and inhabitants of Nuestra Senora de los Dolores de Cevilleta. The amount of land claimed under this grant is 224,770.13 acres, according to the survey made by authority of the United States. (Tr., 44.) This grant was never confirmed by Act of Congress, but the report of the Surveyor General of New Mexico on said grant was transmitted by the Secretary of the Interior to Congress in January, 1875. (Tr., 45.)

No further action in regard to said land was taken by any authority constituted by law for the adjustment of land titles in the Territory (now State) of New Mexico until the filing of the petition of Felipe Peralta and Tomas Cordoba, against the United States in the Court of Private

Land Claims, praying that the validity of said Cevilleta grant be inquired into and that said grant with the boundaries be confirmed unto them, their co-owners and co-possessors, which petition is set out in full at pp. 43-44-45-46 and 47 of the record. The Court of Private Land Claims took jurisdiction of this petition and proceeded to adjudicate the matter in question, and ordered a survey of the said grant, which was made.

On the 25th day of July, 1896, a protest was filed by Jacinto Sanchez and Alcario Sais before the Surveyor General of the United States for the Territory of New Mexico, objecting to the survey and plat of the Cevilleta Land Grant in so far as the same overlapped the Belen Grant, which said protest is set out in full at pp. 51-52-53-54-55 and 56 of the Transcript of Record.

The decree of confirmation of the Cevilleta Land Grant by the Court of Private Land Claims shows that that portion of the Belen Grant now in dispute in this action was taken from the Belen Grant and included within the boundaries of the Cevilleta Grant, which decree of confirmation is set out in full at pp. 107-108-109-110-111-112-113 and 114.

It does not appear anywhere in the record that the owners or possessors of the Belen Grant, or any one authorized to act for them, were ever parties to the action before the Court of Private Land Claims, but it does appear that the defendant, the United States, in the action before the Court of Private Land Claims interposed the same objection as that interposed by Jacinto Sanchez and Alcario Sais in their petition of protest before the Surveyor General of the Territory of New Mexico, although not so full.

The Cevilleta Grant was confirmed by the United States Court of Private Land Claims on December 4, 1893, and the survey thereof was approved by the same court on De-

cember 12, 1901, and shows a conflict with the Belen Grant as to 11,005.98 acres; the northern boundary of the Cevilleta Grant extending north of the southern boundary of the Belen Grant.

Upon the action of the Court of Private Land Claims and the record of this procedure in the case of Felipe Peralta and Tomas Cordoba vs. the United States, the plaintiff bases its action in ejectment and files its complaint in the usual form, describing the entire grant to the plaintiffs, and prays judgment against the defendant for the recovery of the lands, described in their complaint, which complaint is set out in full at pp. 3-4 and 5 of the record. The defendants filed their answer to this complaint, denying that plaintiff was the owner or entitled to the possession of the land, described in the complaint, and set up adverse possession, alleging title, founded upon a patent from the United States to the Town of Belen, which answer and patent are set out in full, pp. 10-11-12-13-14-15 and 16 of the record. To this answer, the plaintiffs replied, setting up the action of the Court of Private Land Claims as *res judicata* and not subject to re-examination or inquiry in any court, and further alleging by way of reply to the answer that the predecessors in title to the plaintiff and the defendant practically located upon the ground the boundary line between these two grants, and that such boundary line had been acquiesced in by the predecessors in title of the plaintiff and of the defendant long before the institution of this suit, and that these defendants were estopped thereby from asserting title or questioning the boundary line designated by plaintiffs, but there is nothing in the record that shows such practical location.

The appellants contend, first, that the Court of Private Land Claims had jurisdiction of the original petition of Felipe Peralta and Tomas Cordoba for the confirmation of

the Cevilleta Land Grant; Second, that the court also had jurisdiction to hear and adjudicate the objections filed and to order the re-survey; third, that the Court of Private Land Claims ascertained as a fact by a proceeding essentially judicial in its nature, the common boundary between the Cevilleta Grant and the Belen Grant; fourth, that the owners of the Belen Grant are estopped to question the location of this boundary line, or to claim any land to the south of that line, as established by the Court of Private Land Claims; fifth, that Jacinto Sanchez and Alcario Sais represented in the Court of Private Land Claims the defendant in this case and its predecessors in title.

The Questions Stated.

We contend that the Court of Private Land Claims had neither jurisdiction of the subject-matter nor of the person of the defendant, and its judgment could not therefore in any manner bind it.

The Court of Private Land Claims was a court of special and limited jurisdiction and had no power to do anything except to settle a controversy between claimants to a Spanish or Mexican grant, and the United States for the purpose of adjusting such claim between the government and the claimant and that its decree could go no further than to quit claim to the claimant the lands comprising the grant in so far as the United States was concerned and further that such court was expressly precluded by the law which created it from attempting to decide a dispute between rival claimants, such as the plaintiff and the defendant in this case.

Second. We further contend that the United States having by its patent to the Town of Belen in 1871 quit claimed its title to the strip of land in controversy, the Court of

Private Land Claims could acquire no jurisdiction over it and any decree made by it was, in so far as the particular land in controversy is concerned, null and void and of no effect.

Third. That the case of Felipe Peralta and Tomas Cordoba vs. the United States, in the Court of Private Land Claims, which was set up by the plaintiff herein as *res judicata* of the question here at issue, is not *res judicata* for the following reasons: (a) That court had neither jurisdiction of the subject-matter nor of the parties to this case; (b) there is no identity of parties, neither parties to that case being parties to the case at bar; (c) there is no identity of issues, the issues there being whether the Cevilleta de La Joya Grant was a valid claim against the United States and, if so, to what extent; the issue here being the title to the land in controversy as between the Cevilleta de La Joya Grant and the Town of Belen Grant; so that we contend every element of *res judicata* is lacking.

Fourth. We contend further that there is no estoppel as against the Belen Grant Trustees to claim this land, because: (a) The Belen Grant a corporation is not bound by the action of Jacinto Sanchez and Alcario Sais in protesting to the Surveyor General against the first survey of the Cevilleta de La Joya Grant, nor could they by a mere recital in their protest or by employing counsel who pretended to represent all the people of the Town of Belen, estop this defendant from setting up the just claim of the Belen Grant in this suit; (b) because the attempt on the part of the Court of Private Land Claims to decree lands of the Belen Land Grant to belong to the Cevilleta de La Joya Grant was beyond its power and jurisdiction and even the voluntary appearance and consent of the actual parties would not be a valid judgment and would not constitute an estoppel.

ARGUMENT.

The Court of Private Land Claims had no jurisdiction of the original petition of Felipe Peralta and Tomas Cordoba for the confirmation of the Cevilleta Land Grant in so far as it conflicted with or affected the Belen Land Grant.

The Court of Private Land Claims was a court of limited jurisdiction created by Congress for the purpose of hearing and determining claims of a particular character specially pointed out and described in the body of the act creating the court; and a party seeking relief under this act must have presented for adjudication a case clearly within the act, or relief could not be given. All the powers conferred upon the Court of Private Land Claims are subject to and controlled by Section 13 of the Act creating the Court of Private Land Claims, which provides:

> "That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely:
>
> First. No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the government of Spain or Mexico, or from any of the states of the Republic of Mexico, having lawful authority to make grants of land, and one that if not then complete and perfect at the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States, and that the United States are bound upon the principles of public law, or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date already complete and perfect.
>
> Second. No claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place.

Third. No allowance or confirmation of any claim shall confer any right or title to any gold, silver, or quicksilver mines or minerals of the same, unless the grant claimed effected the donation or sale of such mines or minerals to the grantee, or unless such grantee has become otherwise entitled thereto in law or in equity; but all such mines and minerals shall remain the property of the United States, with the right of working the same, which fact shall be stated in all patents issued under this act. But no such mine shall be worked or any property confirmed under this act without the consent of the owner of such property until specially authorized thereto by an act of Congress hereafter passed.

Fourth. *No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority.*

Fifth. *No proceeding, decree, or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be reserved and saved to the same effect as if this act had not been passed;* but the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or rights in such lands.

Sixth. No confirmation of or decree concerning any claim under this act shall in any manner operate or have effect against the United States otherwise than as a release by the United States of its right and title to the land confirmed, nor shall it operate to make the United States in any manner liable in respect of any such grants, claims or lands, or their disposition, otherwise than as is in this act provided.

Seventh. No confirmation in respect of any claims or lands mentioned in section six of this act or in respect of any claim or title that was not complete and perfect at the time of the transfer of sovereignty to the United States as referred to in this act, shall in any case be made or patent issued for a greater quantity than eleven square leagues of land to or in the right of

any one original grantee or claimant, or in the right of any one orginal grant or two or more persons jointly, nor for a greater quantity than was authorized by the respective laws of Spain or Mexico applicable to the claim.

Eighth. No concession, grant, or other authority to acquire land made upon any condition or requirement, either antecedent or subsequent shall be admitted or confirmed unless it shall appear that every such condition and requirement was performed within the time and in the manner stated in any such concession, grant, or other authority to acquire land."

Subdivision four of section 13, quoted above, provides that: *"No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority."*

The Supreme Court of the United States in construing subdivision four of section 13, in the case of the United States vs. Baca, 184 U. S., at page 659, 46 L. Ed., 736, says:

"The language of this provision appears to us too clear to be misunderstood or evaded. The manifest intent of Congress appears to have been that with any land, of the right to which Congress, in the exercise of its lawful discretion, had itself assumed the decision, the Court of Private Land Claims should have nothing to do. The whole jurisdiction conferred upon that court is to confirm or reject claims presented to it, coming within the act. All the powers conferred upon it are incident to the exercise of that jurisdiction. When it has no jurisdiction to confirm or reject, it has no authority to inquire into or pass upon the case, beyond the decision of the question of jurisdiction. The peremptory declaration of Congress, that 'no claim shall be allowed for any land, the right to which has hitherto been lawfully acted upon and decided by Con-

> gress,' necessarily prohibits the court from passing upon the merits of any such claim."

And the same court, speaking in the case of the United States vs. Conway, 175 U. S., 71; 44 L. Ed., 76, says:

> "When the title has once been confirmed by Congress it should be respected by the Court of Private Land Claims as if it were a confirmation by the court itself, and conflicting claimants are at liberty to resort to the ordinary remedies at law or in equity, according to the nature of the claim."

It clearly appears from the record in this case that the Court of Private Land Claims assumed jurisdiction of a strip of land, containing 11,005.98 acres, and by decree took it away from the Belen Grant and awarded it to the Cevilleta Grant long after it had been confirmed to the Town of Belen by Act of Congress, and a patent issued therefor in pursuance of such confirmation. The claim in this case is thus brought directly within the fourth subdivision of section 13 above set forth, and we think it is perfectly clear that the Court of Private Land Claims had no jurisdiction over the strip in question in this suit.

Las Animas Land Grant Co. vs. U. S., 179 U. S., 201, 45 L. Ed., 155;
U. S. vs. Baca, 184 U. S., 659, 46 L. Ed., 736;
U. S. vs. Conway, 175 U. S., 60, 44 L. Ed., 72;
Town of Real de Dolores Del Oro, et al., vs. U. S., et al., 175 U. S., 71, 44 L. Ed., 76;
6 Fed. Stat. An., 58.

The Court of Private Land Claims had no jurisdiction to hear or adjudicate the objections filed by Jacinto Sanchez and Alcario Sais or any one else assuming to represent the Town of Belen, or to order the re-survey of any portion of the Belen Grant.

This was as the appellant contends an original proceeding under section eight of the act creating the Court of Private Land Claims.

The second paragraph of this section reads as follows:

> "If in any such case, a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for such land only as such perfect title shall be found to cover, *always excepting any part of such land that shall have been disposed of by the United States,* and always subject to and not to affect any conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles in this section mentioned shall have any effect other or further than a release of all claim of title by the United States; and no private right of any person as between himself and other claimants and persons, in respect to any such lands, shall be in any manner affected thereby."

The jurisdiction of the Court of Private Land Claims was limited as to the subject-matter. It was bound to except from its jurisdiction any land already disposed of by the United States. The objections filed with the Surveyor General by Jacinto Sanchez and Alcario Sais, purporting to represent the owners of the Belen Grant were to the inclusion of land belonging to the Belen Grant within the proposed boundaries of the Cevilleta Grant. The Court had before it the patent issued by the United States to the town of Belen together with the plat of the survey. The land embraced in the objection was land included in the patent by the United States to the Town of Belen; and the act creating the court had expressly denied it jurisdiction to adjudicate the rights of parties to land already disposed or by the United States, consequently jurisdiction to

hear the objection filed and to order a re-survey could not be conferred upon the court by any act of the objectors. They could not be bound by any order, judgment or decree entered in the proceedings before the Court of Private Land Claims as they were not interested parties in the confirmation of the Cevilleta Grant.

The main object of the Court of Private Land Claims was to determine whether or not the land included in the Cevilleta Grant was private or public property, and if it was private property to confirm the grant, if the claimants as between themselves and the United States established their right to it; and on the contrary if the land was public property, belonging to the public domain it was the duty of the court to refuse confirmation, and merely to determine if and to whom the United States ought to release its right as sovereign proprietor of the soil. The United States Court in the case of Coe vs. U. S., 155, page 76, 39 Law Ed. 79, says that it was for this purpose that the act of March 3, 1891, was passed, establishing the Court of Private Lands Claims for the settlement of claims against the United States to lands derived by the United States from the Republic of Mexico.

U. S. vs. Conway, 175 U. S., 175, 44 L. Ed. 72;
Coe vs. U. S., 155 U. S., 76, 39 L. Ed. 79.

In this case there was no action between the owners and possessors of the Belen Grant and the United States or between the claimants of the Cevilleta Grant and the owners and possessors of the Belen Grant.

Neither the persons nor the subject-matter of the objections filed to the survey were within the jurisdiction of the Court of Private Land Claims, and therefore it had no power over them.

The Supreme Court of Illinois in passing upon the ques-

tion of jurisdiction in the case of "The City of Waverly vs. The Auditor of Public Accounts, *et al.*, says:

> "On bill by a municipal corporation to have its bond and the coupons thereto attached declared illegal and void, when neither the bonds nor the owners are within the jurisdiction of the court, no decree can be rendered that will affect such bonds or their owners."

Neither the defendants in this action nor their predecessors in title or interest were even within the jurisdiction of the Court of Private Land Claims in the matter of the confirmation of the Cevilleta Land Grant, neither were they ever parties to an action before that court.

Neither the defendants nor their predecessors in interest or title could be bound by any action of the Court of Private Land Claims in adjudicating the objections filed by Jacinto Sanchez and Alcario Sais and ordering a re-survey of the Cevilleta Grant or any portion of the Belen Grant.

The City of Waverly vs. The Auditor of Public Accounts, et al., 100 Ill., 354;

The Town of Virden, et al., vs. Thomas B. Needles, et al., 98 Ill., 366.

The defendants in this action or their predecessors in title or interest could not by consent or by stipulation invest the Court of Private Land Claims with jurisdiction or power not authorized by law or conferred upon it by the Act of Congress creating it.

> "The power to hear and determine a cause is jurisdiction, and consent of parties can not confer jurisdiction upon a court in which the law has not vested it."
>
> *Isaac Fleischman vs. Samuel J. Walker, et al.*, 91 Ill., 318.

The proposition that jurisdiction can not be conferred by consent where the court is not vested by law with jurisdiction is so elementary we deem it unnecessary to say more than cite a few of the many authorities on the subject.

Fleishman vs. Walker, 91 Ill., 318;
Balance vs. Forsyth, 62 U. S., 389, L. Ed., 143;
Dunham vs. Hatcher, 31 Ala., 483;
State vs. Tolleston Club of Chicago, 53 Fed., 18;
Hoover vs. Hanna Blacks, 48; see, also, 11 Cyc., page 673 and note;
Cent. Dig., Vol. 13, Subject Courts, Secs. 75 and 76.

The Court of Private Land Claims having no jurisdiction over the subject-matter in this controversy could not exercise judicial power over it. The court could not adjudicate or release any right to the land in question here. Congress had already relinquished to the town of Belen all interest of the United States in and to the said land, and there could be no judicial action in relation to the land already disposed of by Congress, by the Court of Private Land Claims. It is essential to the application of the doctrine of *res adjudicata* that there shall have been judicial action by a court of competent jurisdiction. Identity of the cause of the demand; identity of the parties in the character in which they are litigants.

The Supreme Court of the United States in the case of the Washington, Alexandria & Georgetown Steam Packet Co. vs. Frederick E. Sickles, *et al.*, 24 How., 333, 16 L. Ed. 651, says:

> "This court described the rule in Aspern vs. Nixon, 4 How., 467, in such cases to be, that a judgment or decree set up as a bar by plea, or relied on as evidence by way of estoppel, must have been made by a court of competent jurisdiction upon the same subject-matter, between the same parties for the same purpose."
>
> *Ensinger vs. Powers*, 108 U. S., 292, 27 L. Ed. 732,

Last Chance Mining Co. vs. Tyler Mining Co., 157 U. S. 683, 39 L. Ed., 859.
Washington S. Packing Co. vs. Sickles, 16 L. Ed. 650 and 770.
Aspern vs. Nixon, 11 L. Ed., 1059;
Lyon vs. Perin, etc., Mfg. Co., 125 U. S., 698, 31 L. Ed., 839.

Where a matter has been attempted to be adjudicated by a court without jurisdiction, there could be no right adjudicated or released in order to make such judgment a bar to a future action, Haldeman vs. U. S., 91 U. S., 584, 23 L. Ed. 423; and a trial upon which nothing was determined or could be determined by the court can not support a plea of *res adjudicata* or have any weight as evidence at another trial.

Gardner vs. Mich. Central Rd. Co., 150 U. S., 349, 37 L. Ed., 1107.

Without a judgment, a plea of *res adjudicata* has no foundation; and the mere findings of the court, even though in a prior action, upon the precise point involved in a subsequent action, and between the same parties, do not constitute a bar.

Okla. City vs. McMaster, 196 U. S., 529, L. Ed. 587;
Reed vs. Proprietors Locks & Canals, 12 L. Ed. 1077.

The action here was a mere finding by the Court of Private Land Claims that a re-survey should be made of the Cevilleta Grant fixing a certain line as the northern boundary of the Cevilleta Grant, there was no judgment decreeing the land in question.

The alleged acts of Jacinto Sanchez and Alcario Sais do not constitute an estoppel as to this defendant.

The cases cited by counsel in his brief as to what constitute an estoppel are not applicable to this case.

The mere objection to the first survey of the La Joya Grant, even if it be conceded that Sanchez and Sais were authorized to, and did act for all the claimants of the Belen Grant, was not a submission of the question of title to the land here in controversy to a court of competent jurisdiction for settlement. This objection, even if the claimants to the Belen Grant authorized it; was at most but a protest against the United States confirming the survey and thus casting a cloud on their title. Counsel concedes that the Belen Grant was under no obligation to protest and if they did not protest the confirmation of the Cevilleta de La Joya Grant would not affect their rights, if this argument is correct, then the Belen claimants were under no obligation to protest against the last survey and not having done so are in no way bound by the decree. As we have seen the decree by the very terms of the statute could have no effect "other or further than as a release of all claims of title by the United States; and no private right of any person as between himself and other claimants or persons, in respect of such lands, shall be in any manner affected thereby."

Sec. 8, Act March 3, 1891, VI Fed. St. An., 54.

In appellant's brief, it is stated that the owners of the Belen Grant had a right to appeal from the approval of the survey by the Court of Private Land Claims, but we do not find any such right prescribed by the act creating the court and fixing its powers and jurisdiction. On the contrary Sec. 9 of the act provides who may appeal and limits the right to the parties to the suit, *i. e.*, the claimant in case of rejection or the government in case of confirmation, and nowhere in the act is there any provision for any other

appeal. The objector to the survey is not a party to the suit, nor is there any provision whereby he may become a party. True, adverse claimants might have been made parties as provided by the act but such "adverse claimants" as are therein referred to, are necessarily adverse claimants whose claims have not already been passed upon by Congress directly, as in the case of the Belen Grant claimants, or by the Court of Private Lands Claims, not adverse claimants, whose claims had been adjudicated and settled by Congress and their patent issued.

The contention of appellant is then, that by protesting against one survey, and it being set aside upon such protest and the protest of the United States, coupled with a failure to protest against a later survey, which was in no way binding on it, the defendant is estopped to claim title to a strip of its land, shown by the last survey to be within the boundaries of the Cevilleta Grant. The mere statement of the proposition seems to be enough to refute it.

Again, we do not deny the doctrine announced in Smith vs. Swormstedt, 16 How., 289, and the other cases cited by appellant, but we do assert that they have no application here for neither Sanchez, Sais, nor the attorney, Frost, ever appeared in the Court of Private Land Claims to litigate any question involved in this suit. They appeared, if for the grant at all, as mere objectors or protestants against the survey, not to settle any question of ownership as to the land now in controversy, as between these two grants but at most to prevent the Government from making an error by patenting this strip to both claimants, or rather the larger area of overlap shown by this survey. By this appearance they could confer on the Court of Private Land Claims no power or jurisdiction not conferred on the court by Congress, nor could their protest or failure to protest give any force to the decree of that court which the act of Con-

gress specifically provided it should not have, that is, a settlement of private controversies over the title to these lands as between private claimants.

For the reasons given we respectfully submit that the judgment of the lower court should be affirmed.

R. P. BARNES,
SAMUEL HERRICK,
J. L. NICHOLAS,
Attorneys for Defendant in Error.

THE case is stated in the opinion.

Mr. Neill B. Field for plaintiff in error.

Mr. Samuel Herrick, with whom *Mr. R. P. Barnes* and *Mr. J. L. Nicholas* were on the brief, for defendant in error.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This is an action in ejectment to recover the area in conflict between two land grants in New Mexico respectively known as the La Joya and the Belen, the plaintiff being the owner of the former and the defendant of the latter. The defendant prevailed and the judgment was affirmed. 20 N. Mex. 145.

The facts are these: Both grants were complete and perfect at the time of the Mexican cession and both were subsequently confirmed, the Belen in 1858 by an act of Congress, c. 5, 11 Stat. 374, and the La Joya in 1893 by a decree of the Court of Private Land Claims under the Act of March 3, 1891, c. 539, 26 Stat. 854. The Belen was the older grant and was patented in 1871, long before the proceeding for the confirmation of the La Joya grant was begun. Shortly after the decree confirming it was rendered the La Joya grant was surveyed preparatory to issuing a patent for it. Objections to the survey were made by two persons interested in the Belen grant, and the survey, with the objections, was laid before the Court of Private Land Claims as was required by the Act of 1891. The objections were to the effect that the survey erroneously placed the northern boundary of the La Joya grant within the Belen grant and thereby wrongly brought the two largely in conflict. After a hearing the court found the objections well grounded, ordered a resurvey of the La Joya grant and particularly designated what should be deemed its northern boundary. A resurvey conforming to that direc-

tion received the court's approval, and a patent for that grant was then issued. While the resurvey greatly reduced the area in conflict, it still left the northern boundary of the La Joya grant within the Belen grant, and a conflict of about 11,000 acres remained.

Without questioning the superiority which otherwise would result from the seniority of the Belen grant, the plaintiff insisted that the action of the Court of Private Land Claims in directing what should be deemed the northern boundary of the La Joya grant, and in approving the resurvey wherein that direction was followed, amounted to an adjudication of the true location of the common boundary between the grants and was conclusive upon the owners of the Belen grant. But the state courts held the contention untenable in view of the provisions of the Act of 1891, and that ruling is the only one called in question here.

The Court of Private Land Claims derived all of its powers from the Act of 1891, the express purpose of which was to provide for and secure the adjudication of Spanish and Mexican land claims as between the claimants and the United States. The act divided the claims into two principal classes. One class, particularly described in § 6, embraced those which were "not already complete and perfect," and the other, particularly described in § 8, embraced those which were "complete and perfect" at the time of the Mexican cession. The La Joya grant belonged to the latter class, respecting which it was specially provided in § 8 that the court's confirmation should not include any land "that shall have been disposed of by the United States," nor have "any effect other or further than as a release of all claim of title by the United States," and that "no private right of any person as between himself and other claimants or persons" should be "in any manner affected thereby." And in § 13 it was generally provided in respect of both classes of claims that all the

proceedings in the court should be conducted and decided subject to certain enumerated restrictions, among which were the following: "Fourth. No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority. Fifth. No proceeding, decree, or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be reserved and saved to the same effect as if this act had not been passed; but the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such lands."

In view of these provisions it is very plain that the Court of Private Land Claims was without any power to revise the action of Congress in confirming a particular grant, or to confirm another grant for the same lands or any part of them, or to determine the rights of private persons, as between themselves, to such lands. This court has frequently so held and has pointed out that a decision by that court sustaining a claim for lands, as to which Congress already had confirmed another claim, would not conclude anyone, but would be void, because in excess of the court's power. *United States* v. *Conway*, 175 U. S. 60; *Ainsa* v. *New Mexico & Arizona R. R. Co.*, *ibid.* 76, 90; *Las Animas Land Grant Co.* v. *United States*, 179 U. S. 201, 205–206; *United States* v. *Baca*, 184 U. S. 653, 659. In the last case it was said:

"The manifest intent of Congress appears to have been that with any land, of the right to which Congress, in the exercise of its lawful discretion, had itself assumed the decision, the Court of Private Land Claims should have nothing to do. The whole jurisdiction conferred upon that court is to confirm or reject claims presented to it, coming within the act. All the powers conferred upon it are incident to the exercise of that jurisdiction. When it has

no jurisdiction to confirm or reject, it has no authority to inquire into or pass upon the case, beyond the decision of the question of jurisdiction. The peremptory declaration of Congress, that 'no claim shall be allowed for any land, the right to which has hitherto been lawfully acted upon and decided by Congress,' necessarily prohibits the court from passing upon the merits of any such claim."

In confirming the La Joya grant and supervising its survey the court proceeded in evident contravention of that prohibition, for it extended the confirmation and survey to about 11,000 acres of lands within the Belen grant which had been confirmed by Congress and patented long before the Act of 1891 was passed. In this respect, therefore, the court overstepped its jurisdiction and its action was void.

As making for a different conclusion the plaintiff contends, first, that consistently with the limitations imposed it was quite admissible for the court to determine and establish the common boundary between the two grants, and, second, that by protesting against the original survey the owners of the Belen grant invited the court to act in the matter and therefore were bound by its decision. But neither contention can be sustained. The Court of Private Land Claims was bound to respect the Belen grant as confirmed by Congress and described in the patent. It was not given any power to reduce the area of that grant or to make any decisions respecting its boundaries that would affect private rights in the grant. On the contrary, it was prohibited from doing so. And, of course, the owners of the grant could not by any act or consent of theirs enlarge the power of the court as defined in the act creating it.

It follows that the state courts rightly refused to regard the action of the Court of Private Land Claims as in any way conclusive of the rights of the owners of the Belen grant in the area in conflict.

Whether the persons who appeared in the La Joya proceeding and objected to the original survey were authorized to represent or speak for all who were interested in the Belen grant seems to have been a disputed question, but as its decision would not affect the result here it requires no further notice.

Judgment affirmed.

BOARD OF TRUSTEES OF THE SEVILLETA DE LA JOYA GRANT, FOR THE BENEFIT OF THE OWNERS IN COMMON THEREOF, *v.* BOARD OF TRUSTEES OF THE BELEN LAND GRANT.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW MEXICO.

No. 129. Argued December 22, 1916.—Decided January 22, 1917.

The Court of Private Land Claims derived all of its powers from the Act of March 3, 1891, c. 539, 26 Stat. 854.

Under that act the Court of Private Land Claims had no jurisdiction in confirming a grant and supervising its survey to extend the confirmation and boundaries over land included in another grant confirmed by Congress and patented before the passage of the act, or to alter the boundaries of such other grant as so confirmed and as described in the patent.

So *held*, where both grants were complete and perfect before the Mexican cession, and the grant confirmed by Congress was senior in time of grant.

Such jurisdiction could not be conferred on the Court of Private Land Claims by consent of the owners of the grant confirmed by Congress.

20 N. Mex. 145, affirmed.